the weekly
Standard

OCTOBER 4, 2004 $3.95

LAURENCE TRIBE'S COPYBOOK
JOSEPH BOTTUM

Tick... Tick... Tick... Tick...

Dan Rather's (and the media's) day of reckoning
BY JOHN PODHORETZ

What the DNC knew (and when)
BY MATTHEW CONTINETTI

CBS and its sources
BY TERRY EASTLAND

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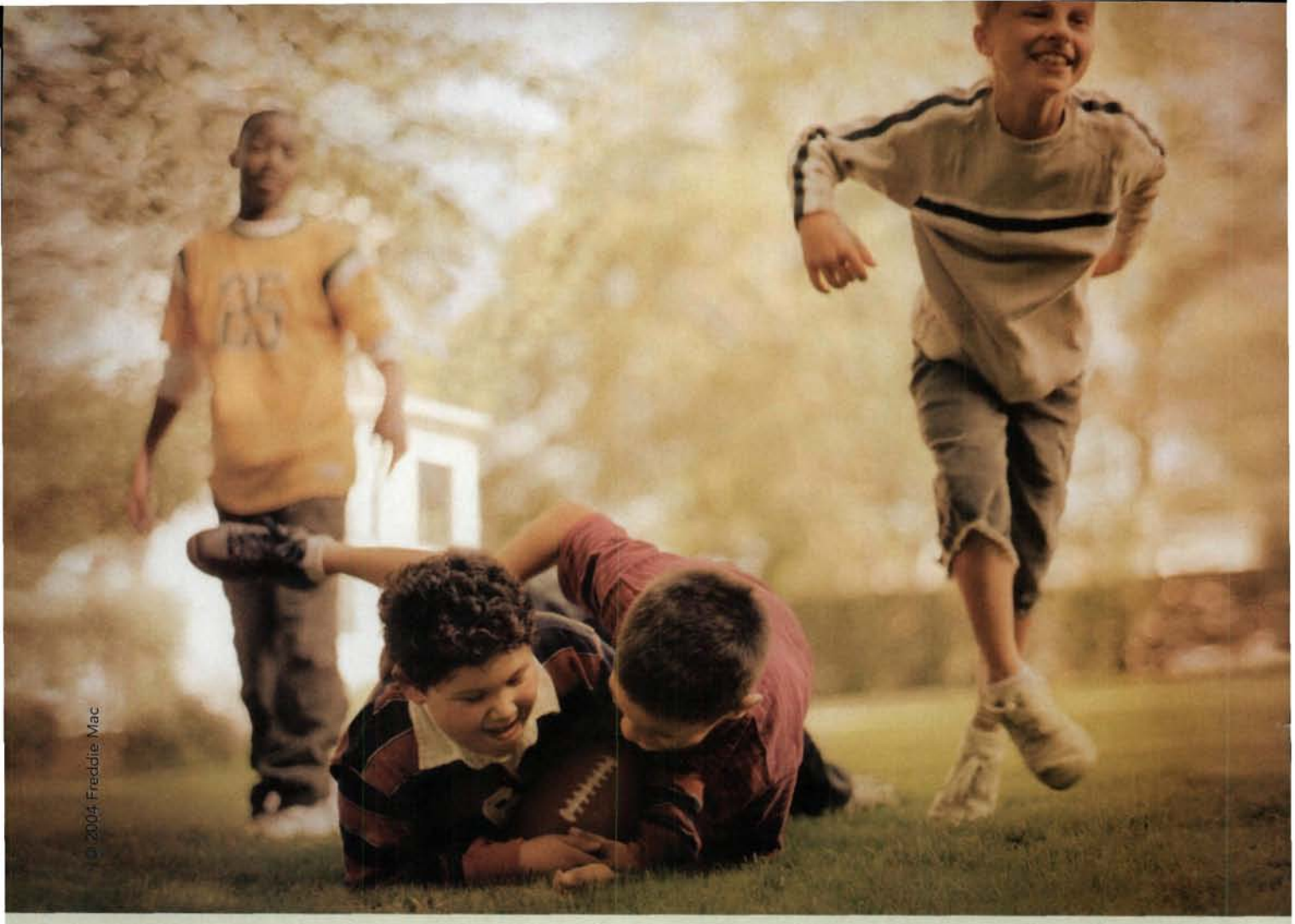

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Earth Tones Out, Jewel Tones In

Writing in the September 27 *New York* magazine, Naomi Wolf... well, you just have to admire her, don't you? No matter how often she fails, no matter how many people laugh at her—doggonnit, she just picks herself up, dusts herself off, and takes another swing at sounding smart.

This time, unfortunately, it's the same old pitch Ms. Wolf has been whiffing at for years. Did you know that "gender imagery" and, yes, even color schemes have a vitally important effect on American voting behavior, especially where women are concerned? It's true!

Republicans understand this better than Democrats, Wolf ruefully notes: "A key tactic is wife deployment. Is Dick Cheney a scary, old-guard, male-dinosaur guy? Send out Lynne to talk about how he whips up brunch." And look how "Karl Rove makes eggs with bacon for Mary Matalin!"

(THE SCRAPBOOK must confess it's a bit confused by this eggs-and-bacon business. Perhaps the gender imagery of Mr. Rove cooking breakfast for Ms. Matalin reassures swing voters because they'd otherwise have to think about Mary in the kitchen with her actual husband, James Carville?)

Ms. Wolf continues: "While Bush Inc. understands the power of the vivid visual image—dressing the entire GOP convention, for instance, in matching tangerine and turquoise" and using "jewel tones on Laura Bush and other women associated with the administration," the Democrats "keep being bumped to the inside pages because they send out their candidate and his wife in neutrals."

And speaking of the Democratic candidate's wife—jeez, Teresa Heinz Kerry has done "more to emasculate him than the opposition ever could."

Let's start with "Heinz." By retaining her dead husband's name—there is no genteel way to put this—she is publicly, subliminally cuckolding Kerry with the power of another man—a dead Republican man, at that. Add to that the fact that her first husband was (as she is herself now) vastly more wealthy than her second husband. Throw into all of this her penchant for black, a color that no woman wears in the heartland, and you have a recipe for just what Kerry is struggling with now: charges of elitism, unstable family relationships, and an unmanned candidate.

Oh, dear. Even THE SCRAPBOOK wells up with sympathy—winces, actually—at the thought of Senator Kerry being "unmanned." Quick, Mizz Teresa! Drop those blacks and neutrals. Try something in tangerine or turquoise instead. ♦

Good Morning, America!

Like millions of ordinary, just-plain-folks all across America, THE SCRAPBOOK bolted out of bed September 17, rushed right to the computer, called up the *TV Guide* website, and learned—oh, joy!—that former ABC "News" blonde person Joan Lunden, 54, is expecting twins. Again. From the same surrogate mother who just last summer delivered a first pair of twins to Lunden and her second husband, Jeff Konigsberg.

Ms. Lunden has three other children by a previous marriage. And Ms. Lunden's surrogate, Deborah Bolig, is known to have delivered at least two other children, a third set of twins, for at least one other couple. If we're counting right, that will make nine children in all. Some number of whom would almost *have* to be related to one another in the ordinary, just-plain-folks sense of that phrase. Wouldn't they?

The famously discreet and well-bred Ms. Lunden won't say.

As she has subsequently explained to *Newsweek*: "We had all these embryos left over," see? "Jeff and I have been banking these embryos for a while. It's funny, you pay freezer storage on embryos and I got the 'Do you want to re-up on your freezer storage?' and Jeff and I said, 'Oh, there's a little sibling in there somewhere very, very cold.'"

Asked by *Newsweek*'s amazingly cheeky Jac Chebatoris whether the embryos in question were the product of eggs from her very own ovaries, the elegant Ms. Lunden waved the question off. "They were our embryos," she curtly replied. "I don't ever discuss any more than that."

That, after all, would be vulgar. ♦

Heavy Weight Spin

Remember, back in June, how the *Los Angeles Times* released a poll showing John Kerry with a sizable 51-44 percent lead over George W. Bush in the presidential horserace? Weirdly enough, the same poll also showed Bush simultaneously ahead among independents, and running better among Republicans than Kerry was running among Democrats. How could this be?

Matthew Dowd, the Bush campaign's top pollster, offered one obvious answer: Democrats were wildly overrepresented—there were one-third fewer Republicans—in the pool of voters the *Times* had surveyed. Had the *Times* properly "weighted" its results—adjusted them for the actual party-ID breakdown thought to exist across the country—things would have come out differently. Dowd called the *Times* poll a "mess."

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Piffle, replied wonkishly inclined Demollectuals. Ruy "Emerging Democratic Majority" Teixeira, for instance, insisted that there was no need to "weight" the *Times* poll's peculiar party ID numbers because "there are ample grounds for thinking there is, in fact, a surge toward the Democrats . . . among the broad electorate" (props to blogger and Democratic pollster Mark Blumenthal for resurrecting this quote).

But that was then. Modern statistical science has apparently since discovered that party ID "surges" are only real when they benefit Democrats, and that it therefore *is* sometimes appropriate to "weight" poll results—like whenever that's the only way to make an apparent Republican advantage disappear.

Two weeks ago, for example, a new CBS/*New York Times* poll put Bush on top of Kerry by eight points, based on responses from a pool of voters with slightly more Republicans than Democrats. Teixeira cried foul: CBS and the *Times* had failed to "weight" their poll!

Actually, the race is tied, Teixeira argued on his website—"if you weight their data to conform to the 4-point Democratic party ID lead which we have good reason to believe is the underlying distribution in the voting electorate. . . . Once you adjust for the apparent overrepresentation of Republican identifiers in some samples, the polls all seem to be saying the same thing: The race is a tie or very close to it."

A man can do wondrous things with statistics. Especially if he's not too worried about looking like a hypocrite. ♦

Parody Update

Our back-page PARODY last week featured that now-famous photograph of teary-faced toddler Sophia Parlock atop her father's shoulders at a John Edwards rally in Huntington, West Virginia—holding what remained of a Bush-Cheney placard that had moments before been ripped from her hands and destroyed by a man wearing an International Union of Painters and Allied Trades T-shirt. The president of that union quickly apologized to the Parlock family "for the distress one of our overzealous members caused."

But suspicious bloggers almost immediately questioned whether the apology wasn't premature. Phil Parlock, they pointed out, had a history of provocative, Republican-sign-holding appearances at Democratic rallies. He'd gotten roughed up for it—and made news—in 1996 and 2000, as well. So was the whole thing a set-up? Maybe the man in the union T-shirt wasn't actually a union member at all?

Nope. Columnist Michelle Malkin called the IUPAT a few days later and asked about it. They told her that they'd "identified the union member who grabbed the Bush/Cheney sign from Phil Parlock's daughter and threw the pieces at the family as they left the event. 'We are taking steps to deal with the individual,'" the union said.

Meantime the president, in fine Bush 41 fashion, has written a note: "Dear Sophia, Thank you for supporting my campaign. I understand someone tore up your sign. So I am sending you a new sign and a signed picture. Please give my best to your family. Sincerely, George W. Bush."

Awww. ♦

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Casual

Total Recall

Pundits normally chew over the world's great ills—war, famine, terrorism, Michael Moore, and the like. But sometimes a smaller matter sticks in the craw and demands attention. This is such a time. The actions of petty-minded government bureaucrats have left a bad taste in my mouth. Literally.

The subject of my ire? The government's moves to deprive the American people—specifically *this* American person—of a commodity that is essential to my pursuit of happiness. I am about to be bereft of the most important ingredient of my "most important meal of the day."

I speak of yogurt. But not just any yogurt. Total is the best damn yogurt on the planet. It's made by an 84-year-old Greek firm called Fage, and it puts to shame the run-of-the-mill competitors that take up so much space on supermarket shelves. Most yogurts are wet, even runny, and faintly evocative of chemicals. For years, I ate a high-end "organic" American brand, not because it tasted good (it didn't) but simply to avoid the calories and cholesterol of a traditional breakfast.

Then last spring, staying at a country inn in Belgium, I had my introduction to the Greeks' nobler yogurt, a substance without the slightest kinship to that thin gruel. Coming home to New York, I sought to replicate it. I scoured the city until I succeeded in finding Total here.

Part of the beauty of this wonderful substance is that it's strained, so as to be mercifully free of the water that accumulates at the top of your everyday yogurt container. It has nearly the consistency and taste of Devon cream. Add a dollop of fine jam, and even in its plain, nonfat incarnation, it far outdoes its competitors' high-fat varieties (though I concede it also costs more).

Over the past few months, I've become a true believer. Imagine my distress, then, to find at my local Trader Joe's last weekend a sign posted on the dairy case announcing that Total was totally absent by order of the Food and Drug Administration.

I felt like a crack addict forced to go cold turkey. As soon as Monday morning rolled around, I placed a desperate call to my dealer to find out what on Earth was going on.

Antonios Maridakis, general manager of Fage USA, explained to me by phone from Athens what had happened. A competitor apparently had tipped off the FDA that Total lacked a requisite Interstate Milk Shipment certificate. These are issued by the states but enforced by the feds. (Which competitor, I'd like to know—so I can organize a boycott.) As it happens, Fage became aware that it needed to jump through this bureaucratic hoop shortly after it started selling in the United States four years ago, but the company couldn't convince any state to send inspectors to Greece to verify the safety of its procedures.

You'd think this would be superfluous in any case, since the European Union has food safety regulations every bit as strict, if not stricter, than those here. But then, the point of such rules isn't really to protect public health. It's to protect the domestic dairy industry. Which is precisely what the rules have done in this case, at the cost of alienating consumers—or at least *this* consumer.

There are wider ramifications here. The United States has been fighting to gain access for genetically modified American foodstuffs into the European market. We are not helping our own cause by discriminating against European yogurt—or against unpasteurized European cheese, another delicious import that has drawn the ire of American regulators. "We are talking about fair trade issues," Maridakis says, "and I don't see anything fair here."

After Total was yanked off store shelves in late August, the New York State Department of Agriculture and Markets finally agreed to send inspectors to Greece (at Fage's expense, naturally). They're due to arrive in mid-October, and, assuming everything is ship-shape, Total will eventually return to stores in New York and other states.

But between now and then, a crisis looms. I've cleaned the local food shops out of Total, and I expect to use up my stash by the end of the month. Then what will I eat for breakfast? Gulp.

Remarkably, this impending catastrophe seems to have escaped the notice of the presidential candidates, who insist on devoting their campaigns to indigestible matters like the economy and the war on terrorism. Personally, I'm hungry for the candidates to enter the culture wars—the yogurt culture wars. My vote, I'll have them know, can be purchased with a 5.3-ounce container of creamy white ambrosia.

Max Boot

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The scary part is, it co-stars Republicans.

Hollywood is trying to crush innovation to maintain its monopoly. And this time they've enlisted Republican lawmakers to help them do it. Their latest production, the "Induce Act" (S. 2560), could outlaw a wide range of technology, including peer-to-peer.

S. 2560 **threatens the personal property rights of Americans** because Hollywood fat cats think their intellectual property rights are more important.

S. 2560 **will be a boon for Hollywood's trial lawyer friends.** It creates a new category of lawsuits designed to harass companies developing technologies Hollywood deem unsuitable. Technologies that keep America competitive and deliver more diversity, efficiency and choice in a way unequaled by Hollywood's entertainment distribution monopoly.

Compromising property rights and encouraging predatory, costly litigation is not a conservative position.

This is one bill that shouldn't play anywhere.

Vote "NO" on S. 2560

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Waffle Watching

Regarding Robert Kagan and William Kristol's "Taking Flip-Flops Seriously" (Sept. 20): Certainly it is fair to point out Sen. John Kerry's inconsistencies on the issues. There are a number of them and he should be held to task.

But let's be honest: President Bush also changes his positions frequently, including on the subject of Iraq and how the reconstruction should be implemented.

Indeed, Kagan and Kristol's "Flip-Flops" column appeared within a week of Bush's flip-flop on the budget authority of a national intelligence director. If we look back over time, we see an eye-popping range of Bush flip-flops. Who could forget his promise not to dip into the Social Security surplus? Apparently the president himself has.

President Bush, a self-proclaimed free trader during the 2000 campaign, went on to impose steel tariffs in 2002 and provide a "safety net" for farmers. And who could forget the administration's opposition to, then support for, the Homeland Security Department and the 9/11 Commission? The list could go on and on, but you get the idea.

If we really want to take John Kerry's flip-flops seriously, then we must point out George W. Bush's myriad flip-flops, as well.

Jason B. Shear
Austin, TX

Kerry on the Porch

John Kerry's campaign may well be foundering, and the senator may be having trouble keeping his facts straight, as Matthew Continetti details in "Critical Condition" (Sept. 20). But on Labor Day morning, I saw Kerry give his "front-porch" speech in blue-collar Canonsburg, *Pennsylvania*, 20 miles south of Pittsburgh—not in the mythical town of Canonsburg, West Virginia, where Continetti misplaced him.

The loyal Democrats who turned out by the hundreds to see Kerry visit the birthplace of crooners Perry Como and Bobby Vinton witnessed a tiny but perhaps revealing example of his and his campaign's sloppiness.

As Continetti noted, Kerry opened his 45-minute Canonsburg Address by telling a story about a colorful local eatery: Toy's "My Way Cafe." Kerry said the restaurant sounded like his kind of place because "confused people like me who can't make up our minds" don't have to struggle over what to order from the menu. "He just gives you . . . whatever he's cooked up that day."

Kerry didn't pretend to have actually dined at Toy's. Which is a good thing, because every Democrat in town would

have known he was lying. Toy Gregorakis is not a he, but a she.

Bill Steigerwald
Pittsburgh, PA

Reprint! Reprint!

David Gelernter has written a brilliant article ("Bush's Greatness," Sept. 13). His treatment of the so-called Bush haters is perfect. There is no question that much of the American left is now "progressive" in name only.

Here in New York City, I meet people who claim to be educated, well-read, and sensitive to the opinions of others. Yet when describing conservatives in general, and President Bush in particular, they become filled with rage and spew invective worthy of the vilest hate-monger you could imagine.

Just one recent example: During the Republican convention, an anti-Bush protester carried a sign in front of Madison Square Garden that read, "Where is John Hinckley When You Need Him?"

Sadly, it's this kind of reflexive Bush hatred that drives many of today's so-called liberals.

Thomas J. Croke
Greenlawn, NY

I would be happy to double the price of my subscription for the next year if you would use the money to buy a full page in the *New York Times* and reprint David Gelernter's magnificent piece, "Bush's Greatness."

Perhaps a new title—something like "The Ghost of Kitty Genovese"—would draw a few more *Times* readers into the text.

Steve Chambers
Cypress, TX

David Gelernter's "Bush's Greatness" is a blockbuster. It should be reprinted in every daily and weekly newspaper in the country, including campus newspapers. Not for electoral purposes, mind you, but to educate the general American public about this nation's moral principles in helping the less fortunate of the world. The author should become spokesman and historian of William Kristol's "majority party."

Charles C. Henderson
Henderson, TX

Kass Critics

Michael Cook offers an insightful but frightening commentary on critics of the Kass Council on Bioethics ("Embryo-centrism and Other Sins," Sept. 20). The evidence suggests these critics have embarked on a protracted rhetorical war of attrition designed to wear down their opposition.

I fear that, eventually, they might succeed in persuading Americans of their coldly utilitarian approach to bioethics. Be afraid.

Greg Brown
Norfolk, VA

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An Open Letter to *Weekly Standard* Readers

By David Volk

In his September 27 article about the Daschle-Thune US Senate race, Joseph Bottum purports to write about South Dakota but instead leads his readers to Area 51, where his UFOs (Unsupported Fictional Observations) cannot get off the ground. Born in my state, Bottum now lives half a continent away, but his infrequent tourist stops back here have somehow qualified him to analyze our politics to your readers. Despite all the posted warnings, he must be drinking right out of the Potomac.

Bottum is desperately looking for a scapegoat to explain away the impending possibility of a Thune loss to Daschle. He says he has now found the monster under his bed—former South Dakota Attorney General, four-term Governor, and Congressman Bill Janklow. Bottum wants you to believe that Janklow is responsible for "the destruction of the Republican Party in a majority Republican state". The problem with Bottum's hyperventilating is that when we turn on the lights, there is no monster.

Of all the elective offices a governor—through his job performance and personal power—could logically be expected to influence, seats in the state legislature are probably at the top of the list. During the 16 years in which Janklow was either governor or running for governor, Republicans increased their strength in the state legislature in every election. During the eight years when Janklow was not on the ballot (between his two sets of terms), Republicans lost legislative seats in every election. In 2002, when Janklow ran successfully for Congress, Republicans captured every statewide race in South Dakota except for two: a Democrat was elected Commissioner of School and Public Lands, and Tim Johnson defeated Thune for the US Senate seat. Back in 1978, when Janklow first ran for governor, registered Democrats actually outnumbered registered Republicans in South Dakota. By 2002, Janklow's final year as governor, the number of registered Republicans had increased by over 36,000, and the number of registered Democrats had decreased by over 10,000. By what voodoo math can Bottum call this the "destruction of the Republican Party"?

Bottum accuses Janklow of "culling fiscal conservatives from the Republican party." Compare that unsupported assertion with the facts. In 1994, South Dakota citizens came within a handful of votes of passing a property tax limitation measure that would have devastated local schools and local governments. The voters also called Janklow out of political retirement, asking him to lower their property taxes and stop what they saw as the skyrocketing growth of state government. He responded by lowering property taxes by 30%, decreasing the number of state government jobs by over 1,000 (over 12% of his total workforce), and decreasing the overall size of the government's budget by millions. In its "Fiscal Report Card on America's Governors: 1998", the Cato Institute named Bill Janklow the best governor in the United States for "reducing taxes and restraining revenue growth". The Institute wrote, "During his second stint as governor, Janklow has brought South Dakotans both tax relief and tightfisted spending restraint. That impressive fiscal record puts him at the top of his class." During Janklow's years as governor, South Dakota was slammed by blizzards, floods, forest fires, droughts, and Jimmy Carter's raging inflation and embargo on farm products. Yet, Janklow and our legislature balanced our state's budget every year. The only things he was culling were waste and inefficiencies in the government.

Bottum accuses Janklow of "remaining close friends with Daschle". True, despite their stark political differences, the two men are good personal friends. And the problem is? We are left wondering who would benefit if South Dakota's statewide elected officials of differing political parties hated each other. Certainly not the people of our state.

South Dakota, a state with 44,000 more registered Rs than Ds and a long tradition of voting for Republican presidential candidates, today finds itself represented on Capitol Hill by three Democrats. (North Dakota, with similar political demographics, also sends three Ds to DC. Perhaps Bottum believes that Janklow is somehow responsible for that, too.) How can this dissonance be explained? Based upon my years in statewide elective office, I have an observation.

All too often over the years, in elections for US Senate and House seats in South Dakota, the Democrat candidate keeps talking about the issues, and the Republican candidate keeps talking about the Democrat candidate. Bottum himself pratfalls right into that trap. Although he presumably supports Thune, his article has scant praise for John's stands on any issues (including an odd statement that "Thune always seemed a weak man to his colleagues") and piles and piles of invective for Tom Daschle.

Because Thune did not defeat Tim Johnson in 2002 by "10 or 20 points", Bottum concludes that "he almost deserved to have the election stolen for leaving it so close". Does anybody in our democracy—besides Bottum—believe that any candidate for public office, under any circumstances, deserves to have an election stolen from him?

At any rate, the conspiracy theory that Thune lost the 2002 Senate election because of "the manufacture of votes on the Indian reservations" has collapsed for a simple reason. There is no proof. Such boogie man mongering merely smokescreens the inadequacies in Thune's 2002 campaign, faults of which John himself is painfully aware.

What is Bottum's real reason for dragging Janklow into a story ostensibly about John Thune and Tom Daschle? During Janklow's campaign for Congress in 2002, Bottum trashed him, but following Janklow's election victory, Bottum, unburdened by shame or class, called him and wanted an interview. Janklow told him to run up a rope. So this is how stories get into one of the most respected conservative journals in America?

In the end, Bottum's jaundiced journalism is far less of a telling hatchet job on Janklow, now a private citizen spending his hours with his five grandkids, than it is an insult to thousands of South Dakotans who supported Janklow over the years simply because they themselves are a lot like him. They are independent thinkers. They put pragmatic results over partisan ideology. They prefer the unvarnished truth over political stereotypes. If "the South Dakota of Bill Janklow" is "an uphill climb" and not a golden opportunity for Thune, then the fault lies with someone other than Bill Janklow.

Active in the Republican Party for 30 years, David Volk became the youngest person ever elected to statewide office in South Dakota when, at the age of only 25, he won the election for State Treasurer in 1972. Voters re-elected him to four more terms. Volk was awarded the Bronze Star and Army Commendation medals while serving with the 101st Airborne Division in Vietnam. He served two years as the state's Commissioner of School and Public Lands and eight years as Department Secretary of the state Department of Commerce and Regulation and its 500 employees. He also served as Field Representative for South Dakota Congressman Ben Reifel and State Director for South Dakota Congressman Bill Janklow.

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A Grand Old Party

Like Andrew Ferguson, I watched the entire Republican convention on C-SPAN ("I Can't Believe I Watched the Whole Thing," Sept. 13). I was electrified and, for the first time, truly optimistic.

I did not stoop to nitpicking about Bill Frist's gestures, John McCain's message, George Pataki's quiet but forceful delivery, or indeed Zell Miller's fiery denunciation of John Kerry. Nor did I obsess, as Ferguson did, over the repetition of the home ownership issue. It seems that only Arnold Schwarzenegger and President Bush escaped Ferguson's rake-over.

Ferguson appears to have become so cynical in his profession that he missed the exuberant spirit of the convention. It was a grand old show for a Grand Old Party—to be enjoyed, not picked apart.

Ferguson doubtless thought he was being funny, but he sounded instead like a sneering liberal with a hangover. I recommend that he take a long vacation to regain his perspective. It might do the old grouch some good.

Charlotte Anderson
Wayne, PA

Cambridge Copycats

In "Another Harvard Copycat" (The Standard Reader, Sept. 20), Joseph Bottum lends tacit credence to the calumny promoted by those modern masters of agitprop—MIT professor Noam Chomsky, *Nation* columnist Alexander Cockburn, and DePaul professor Norman Finkelstein. Bottum repeats the story that Harvard Law School professor Alan Dershowitz "is accused of excessive dependence on an earlier book about Israel."

The statement is technically true: Dershowitz was accused of plagiarism by the trio named above. But when Harvard administrators looked into the matter, they cleared Dershowitz of plagiarism and any other form of academic misconduct growing out of his book *The Case for Israel*.

James Friedman, the former president of both Dartmouth College and the American Academy of Arts and Sciences, concluded the assertions against Dershowitz did not set out a case of plagiarism "under any reasonable definition of that word." And Dershowitz's Harvard colleague (but hardly ideological soulmate) Charles Fried told the *Harvard Crimson* that Dershowitz's alleged offense was "a normal thing" that "everyone does." Fried said the plagiarism charges were "stupid, unfair, and ridiculous," and came "from biased accusers."

Doris Kearns Goodwin and Charles Ogletree, linked with Dershowitz in Bottum's piece, were indeed accused of academic misconduct—misconduct for which they have, properly, apologized. Dershowitz, on the other hand, has rightly counterattacked against Chomsky, Cockburn, and Finkelstein, who have a long history of criticizing any high-profile scholar with the nerve to support Israel.

Harvey A. Silverglate
Cambridge, MA

Joseph Bottum responds: I respect and admire Prof. Silverglate, but I did say merely that Dershowitz had been "accused." For that matter, I have interviewed (and admire) Prof. Dershowitz and second his support for Israel against his accusers. But I am less confident than Prof. Silverglate that there was no "excessive dependence" in *The Case for Israel*.

Vietnam Culture Wars

Editor's Note: In editing this letter for publication two weeks ago, we put a few of our words into the author's mouth. Herewith his original.

Mackubin Thomas Owens neatly divides protagonists in America's decades-long Vietnam war debate into two categories, which could hardly be more simplistic ("Fahrenheit 1971," Sept. 6). "On the one side in this culture war," he writes, "are those who believe that Vietnam wasn't very different from other wars. The cause was just, but it was as affected by ambiguities as any other war, including World War II. . . . On the other side are those for whom the Vietnam war represented the very essence of evil."

Of course, this dichotomy presents some immediate problems. We know into which category Owens places John Kerry, since Owens accuses Kerry of giving "'Americanized' Soviet propaganda" in his 1971 Senate testimony. But into which category would Owens place Bob Kerrey, whom he mentions elsewhere in his article, but doesn't categorize?

For that matter, into which category would he place such eminent Vietnam war critics as Stanley Karnow (for his firsthand accounts of American atrocities in Vietnam), or William Bundy (for his writings about indiscriminate American bombing in Cambodia), or even Robert McNamara?

And on which side of the divide would he place other distinguished historians who have researched alleged American atrocities in Vietnam? For example, as Peter Beinart of the *New Republic* recently wrote:

"Miami University Professor Jeffrey Kimball, one of the most respected Vietnam historians, says, 'On the whole, the Winter Soldier Investigations established that some Americans committed atrocities in Vietnam. Claims that their testimony has been discredited are unwarranted.' Another prominent historian of the war, Wayne State University's Mel Small, says, 'Most of the evidence of atrocities presented by the [Winter Soldier] vets remains unchallenged to this day.'"

Notwithstanding the complexity of these critics' research, Owens leaves himself no choice but to include them among his "essence of evil" believers.

Steve Wineberg
Exeter, NH

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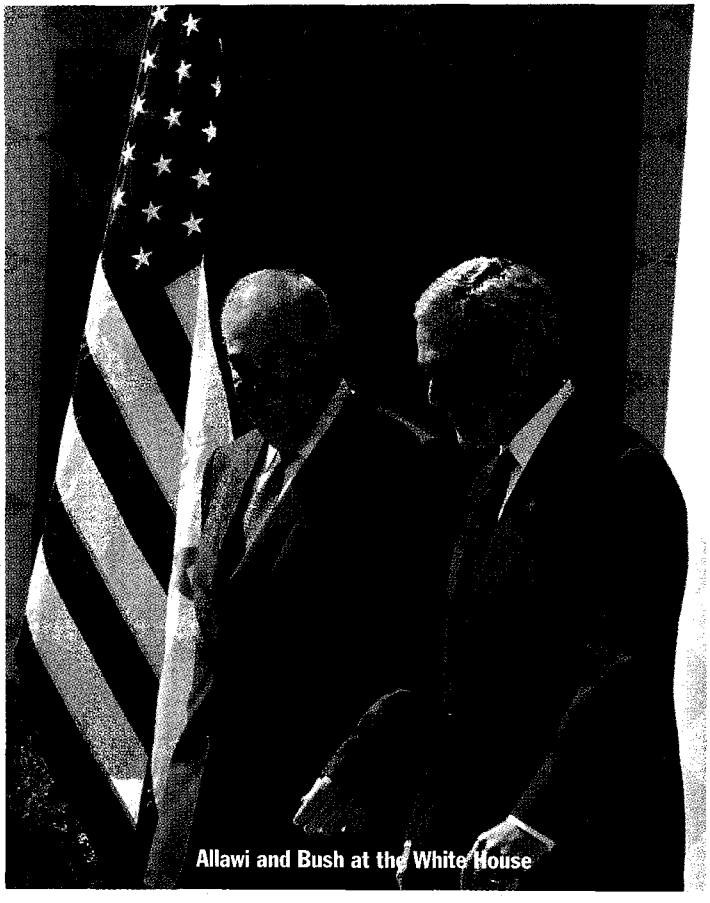
the weekly Standard

Disgraceful

We really don't know what a President John Kerry would do about Iraq. His flip-flops about the war, his inconsistencies, the ambiguity of his current position (win or withdraw?)—all of these mean we can only guess about a Kerry presidency. He would probably be inclined to get out of Iraq as soon as possible; it might be the case, however, that as president he would nonetheless find himself staying and fighting. Who knows?

What we do know is this: Kerry and his advisers have behaved disgracefully this past week. That behavior is sufficient grounds for concern about his fitness to be president.

On Tuesday, President Bush spoke to the United Nations General Assembly. Senator Kerry decided not to say anything supportive of the president as he made the American case to the "international community." Nor did he simply campaign that day on other issues. No. Less than an hour after President Bush finished speaking in New York, Kerry was criticizing his remarks in Jacksonville, Florida: "At the United Nations today, the president failed to level with the world's leaders. Moments after Kofi Annan, the secretary general, talked about the difficulties in Iraq, the president of the United States stood before a stony-faced body and barely talked about the realities at all of Iraq. . . . He does not have the credibility to lead the world."



Allawi and Bush at the White House

EPA Photos / Joe Marquette

So Kerry credits Kofi Annan—who a few days before had condemned the "illegal" American war in Iraq—as a more accurate source of information on the subject than the president of the United States. Kerry also seems to think it significant that the General Assembly sat "stony-faced" while the president spoke. Would the applause of delegates from China, Sudan, Iran, Saudi Arabia, and, yes, France, have made the president's speech more praiseworthy in Kerry's eyes?

Then Kerry was asked about Kofi Annan's description of the war in Iraq as an "illegal" invasion. Kerry answered: "I don't know what the law, the legalities are that he's referring to. I don't know." So the U.S. government is accused of breaking international law, and Kerry chooses not to defend his country against the charge, or to label it ridiculous or offensive. He is agnostic.

Then Kerry continued: "Well, let me say this to all of you: That underscores what I am saying. If the leader of the United Nations is at odds with the legality, and we're not working at getting over that hurdle and bringing people to the table, as I said in my speech yesterday, it's imperative to be able to build international cooperation." It's our fault that the U.N. is doing almost nothing to help in Iraq. After all, according to Kerry, "Kofi Annan offered the help of the United Nations months ago. This president chose to go the other way."

Leave aside the rewriting of history going on here. The president of the United States had just appealed for

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help from the United Nations and its member states to ensure that elections go forward in Iraq. Kerry could have reinforced that appeal for help with his own, thereby making it a bipartisan request. He chose instead to give the U.N., France, Germany, and everyone else an excuse to do nothing over these next crucial five weeks, with voter registration scheduled to begin November 1. If other nations prefer not to help the United States, the Democratic presidential candidate has given them his blessing.

Two days later, Iraqi prime minister Ayad Allawi spoke to a joint meeting of Congress. Sen. Kerry could not be troubled to attend, as a gesture of solidarity and respect. Instead, Kerry said in Ohio that Allawi was here simply to put the "best face on the policy." So much for an impressive speech by perhaps America's single most important ally in the war on terror, the courageous and internationally recognized leader of a nation struggling to achieve democracy against terrorist opposition.

But Kerry's rudeness paled beside the comment of his senior adviser, Joe Lockhart, to the *Los Angeles Times*: "The last thing you want to be seen as is a puppet of the United States, and you can almost see the hand underneath the shirt today moving the lips."

Is Kerry proud that his senior adviser's derisive comment about the leader of free Iraq will now be quoted by terrorists and by enemies of the United States, in Iraq and throughout the Middle East? Is the concept of a loyalty to American interests that transcends partisan politics now beyond the imagination of the Kerry campaign?

John Kerry has decided to pursue a scorched-earth strategy in this campaign. He is prepared to insult allies, hearten enemies, and denigrate efforts to succeed in Iraq. His behavior is deeply irresponsible—and not even in his own best interest.

There is some chance, after all, that John Kerry will be president in four months. If so, what kind of situation will he have created for himself? France will smile on him, but provide no troops. Those allies that have provided troops, from Britain to Poland and Australia and Japan and elsewhere, will likely recall how Kerry sneered at them, calling them "the coerced and the bribed." The leader of the government in Iraq, upon whom the success of John Kerry's Iraq policy will depend, will have been weakened before his enemies and ours—and will also remember the insult. Is this really how Kerry wants to go down in history: willing to say anything to try to get elected, no matter what the damage to the people of Iraq, to American interests, and even to himself?

—*William Kristol*

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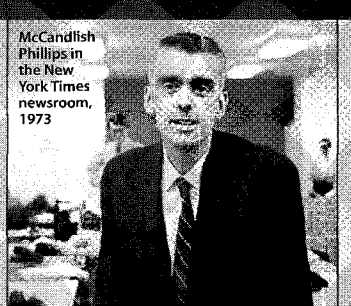

McCandlish Phillips in the New York Times newsroom, 1973

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Stretching Their Lead

The Republicans' Senate prospects look increasingly good. BY FRED BARNES

THE QUESTION no longer is whether Democrats can win back the Senate, now controlled 51-49 by Republicans. The prospect of a Democratic takeover was always remote and has recently become more so. The question now is how much President Bush, should he defeat John Kerry by 5 percentage points or more, can help Republican Senate candidates, assuming there's a coattail effect. And that leads to the more important question of how many seats Republicans might pick up. As many as four or five, or none at all?

The trend at the moment is favorable to Republicans, but nothing is guaranteed. Of the top ten vulnerable seats for either party, Republicans are all but assured of gaining two now held by Democrats (South Carolina and Georgia) and lead in a third (Louisiana). Of these same ten, Democrats are confident of winning only one Republican seat (Illinois). Democrats lead in three more states, one now in Republican hands (Oklahoma) and two currently Democratic seats (Florida and North Carolina). The other three are tossups.

Republicans started with one big advantage: Nine of the top ten races are in red (Bush) states, notably five in the South now held by Democrats. There's a new advantage: the presidential candidates. Bush is welcomed by Republican candidates as a boon to their campaigns. Kerry is treated like a pariah by Democratic candidates. Even Senate minority leader Tom Daschle has rejected him, running a TV ad showing Daschle and Bush hugging. "The remarkable thing about it is how quickly he was willing to throw John Kerry overboard in order to help himself in South Dakota," said Daschle's Republican foe John Thune on *Meet the Press* on September 19. "I mean, I don't know very many party leaders that would do what he just did." Bush is expected to win South Dakota by 20 points or more.

Let's look first at the slam-dunk races. South Carolina is now a solidly Republican (and conservative) state, which makes Rep. Jim DeMint the prohibitive favorite over Democrat Inez Tenenbaum. Georgia, too, has rapidly trended Republican, which means Rep. Johnny Isakson is a shoo-in. Illinois is the opposite of Georgia—one of the few states that's moved in a Democratic direction. Barack Obama, whose speech was a big hit at the Democratic convention, should have no trouble defeating Alan Keyes, recruited from Maryland as the Republican candidate.

Among closer contests where one candidate enjoys a visible lead, the most worrisome for Republicans is in Oklahoma. Former representative Tom Coburn, who kept his promise to limit his terms to three, took an early lead over Democratic representative Brad Carson, then lost it with impolitic utterances.

Carson is probably the best Democratic candidate in the country. He broadcast a TV ad endorsing a constitutional amendment banning gay marriage, thus denying Coburn a pivotal issue in a very conservative state. A Rasmussen poll shows Bush ahead in Oklahoma by 25 points and Carson by 5. To pull Coburn in, Bush may have to win by 30 points or more, a not impossible feat.

North Carolina is the home of Democratic veep candidate John Edwards, but Bush could win the state by a large enough margin to pull Rep. Richard Burr to victory in the Senate race. The Burr campaign got off to a slow start and only now is effectively challenging wealthy Democrat Erskine Bowles, who was trounced by Sen. Elizabeth Dole in 2002. Bowles, once President Clinton's chief of staff, spent $7 million of his own money against Dole and may open his wallet again. The Bush landslide in North Carolina (Bush won by 13 points) broke late in 2000. A win of that proportion this year should rescue Burr.

In Florida, ex-Housing secretary Mel Martinez won a brutal Republican primary and stands a realistic chance of overtaking Democrat Betty Castor. Martinez trailed last week by six points in one poll, by a single point in another. Hurricanes kept politics out of the news for much of September. Now, however, President Bush appears to be expanding his small lead in the state and Martinez may follow. Castor is a centrist Democrat, perfect for Florida. But she's been zinged for her role as University of South Florida president in not firing professor Sami Al-Arian, who's been indicted for aiding terrorists. This is not a marginal issue. She ran a television spot defending herself on the matter. Martinez aims to turn out a huge Latino vote. If he succeeds, he wins.

Republican representative David Vitter has gradually widened his lead in Louisiana, a state that Kerry has now conceded to Bush. But he's unlikely to reach 50 percent in the state's jungle primary on November 2, forcing him into a runoff in December. He'd rather face liberal state treasurer John Kennedy than the more conservative Rep. Christopher John. And, lucky for Vitter, Kennedy was endorsed last week by the most important black Democrat in the state, Rep. William Jefferson. If Vitter wins the seat being vacated by John Breaux, he'd become the first Republican since Reconstruction to represent Louisiana in the Senate.

Fred Barnes is executive editor of THE WEEKLY STANDARD.

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The toss-ups? We'll start with Colorado, where Republican Pete Coors, the beer baron, has gained parity with Democratic state attorney general Ken Salazar. Coors has never run before, but he's turned out to be a capable candidate. Tall and gray-haired, he looks like a senator. The bad news for him is that Bush is running only slightly ahead of Kerry in Colorado and Salazar is a proven vote-getter. But if Bush improves, Coors may as well.

In Alaska, Republican senator Lisa Murkowski is looking stronger than almost anyone expected. She is currently tied with former Democratic governor Tony Knowles. He has won statewide twice, but never when Republicans were united behind a single candidate, as they are now. Murkowski was famously appointed to her father's Senate seat—by her father, Gov. Frank Murkowski. This was an unpopular move. But Alaska is a Republican state that Bush may win more lopsidedly than Kerry does in Massachusetts. If that doesn't lift Murkowski to victory, nothing will.

Finally, there's conservative South Dakota, stomping grounds of liberal Tom Daschle, who's fighting for his political life. Daschle looks more beatable than his fellow Democratic senator Tim Johnson was in 2002. Johnson barely edged out John Thune, but Thune leads Daschle by three points in one poll. In their scintillating debate on *Meet the Press*, Thune called Daschle a tool of liberal special interests and Daschle labeled Thune a rubber stamp for Bush. This is another state Bush will win handily. To help Thune, it better be a landslide.

I've left out an eleventh Senate race, Rep. George Nethercutt's challenge of Democratic senator Patty Murray in Washington. Murray is a drab liberal, but hard to beat in a blue state like Washington. A Nethercutt win would be a bonus for Republicans, the product of a national sweep that elects Republicans almost everywhere. It's possible, but no more so than a string of victories that gives control of the Senate back to Democrats and Tom Daschle. Don't count on it. But sometimes wonders never cease. ♦

Confidentiality Men

CBS and its anonymous source.

BY TERRY EASTLAND

RIGHT NOW, Bill Burkett of Baird, Texas, happens to be the most notorious former anonymous news source in America, which, I'll grant you, is a distinction no one would ever aspire to. On the other hand, no news organization would want to find itself where CBS News is at the present moment, thanks to the story it aired after having pursued and made Burkett an anonymous source.

Burkett, we all know now, is the man who handed *60 Minutes* (the Wednesday edition) the fake documents on which it so heavily relied in its September 8 report suggesting that George W. Bush shirked his duties when he served as a pilot in the Texas Air National Guard. Watching that segment, one knew an important source lay in hiding, given the way Dan Rather introduced the documents. "*60 Minutes*" he said, "has obtained a number of documents we are told were taken" from the personal files of Bush's squadron commander, Lt. Col. Jerry Killian. The documents took the form of memos in which the good colonel, who died in 1984, evidently said that he had been pressured to "sugarcoat" Bush's Guard performance and that the future president had ignored an order to take a physical examination.

Now, news organizations don't often "obtain" documents unless someone provides them, and that someone, unnamed, had indeed provided them, along with a description of where they came from, which was conveyed in those three little words: *we are told*. Doubtless Burkett felt secure in his anonymity as he watched the *60 Minutes* segment. But 12 days later he would be fully revealed.

Terry Eastland is publisher of THE WEEKLY STANDARD.

New and then old media subjected the memos (dare I say "hat tip" to CBS News for posting them on its website?) to withering analysis, calling their authenticity into serious question within 24 hours. At first, CBS simply ignored the criticisms. But it could do that for only two days, as doubts about the memos grew. CBS then attacked the documents' critics (many are "partisan political operatives," said Rather) while defending the documents in every particular. But CBS couldn't keep that up, not once it conceded that questions about the memos came from all corners, not just from "active political partisans." Yet even the credible critics were wrong, CBS insisted. Relying on judgments of new analysts, Rather, anchoring the Evening News on September 13, declared the documents "authentic" and the story "true."

But the story about the *60 Minutes* story was hardly going away. The woman who happened to be Colonel Killian's secretary when he was said to have written the memos—Marion Carr Knox—surfaced to say that she hadn't typed those memos and that they weren't authentic. Knox, however, did think she had actually typed "ones like" them containing "the same information." Rather drew these points from Knox during an interview for the September 15 installment of *60 Minutes*. It was apparent that he still believed in what he called "the major thrust of our [original] report." But no longer was he willing to defend the memos' authenticity. "Are those documents authentic," he asked, or "were they forgeries or re-creations?" On this, he said, "We will keep an open mind."

Strikingly, Rather said nothing about the source of the memos, which he had previously defended as "solid" and which CBS News in a press release had

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declared "unimpeachable." The duty of defending its source fell to the network's public affairs shop, which issued a release invoking "longstanding journalistic ethics" to explain its unwillingness "to reveal its confidential sources or the method by which *60 Minutes* Wednesday received the documents."

Other media thought those issues worth pursuing. Indeed, in the September 20 issue of *Newsweek*, available on newsstands on September 13, Howard Fineman and Michael Isikoff said flatly that Burkett, a former commander in the Texas Air Guard who was well-known to Texas and some national media organizations, was "a principal source" for CBS's story.

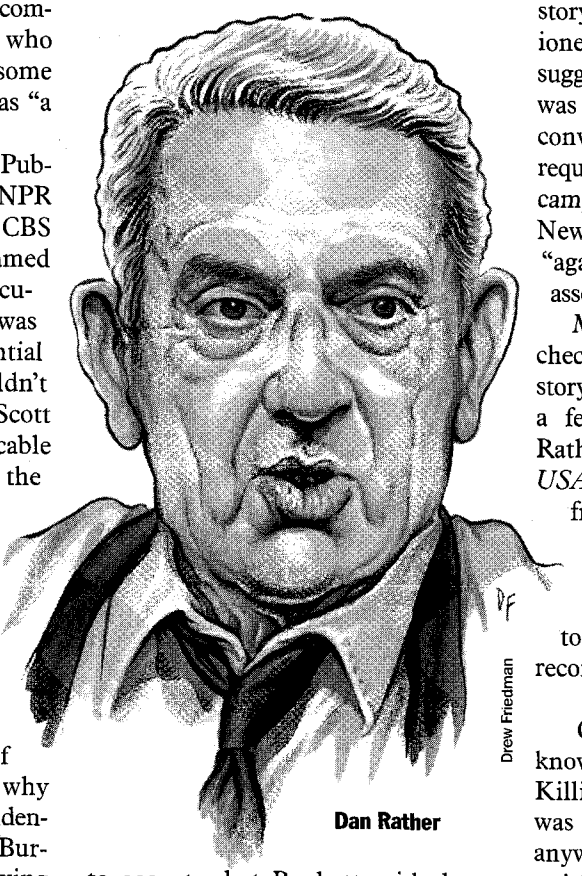
On September 18, on National Public Radio's Weekend Edition, NPR senior news analyst (once of CBS News) Dan Schorr likewise named Burkett as the source of the documents before adding that CBS was "now stuck" with a confidential source, meaning that they couldn't disclose Burkett's name. Host Scott Simon noted that perhaps applicable here was "the old rule" that "if the source turns out to be untrustworthy, you [as a journalist] are released from your agreement [and] can reveal him."

Over that weekend CBS decided that Burkett was, indeed, an untrustworthy source, and during the *Evening News* of September 20, Rather explained why in a piece in which he more than identified Burkett by name—he had Burkett on camera, confessing to having "misled" the network on the documents' origins.

How so? Noting that Burkett "did not come to us, we went to him and asked for the documents," Rather said that Burkett told CBS that he had gotten the documents from "a fellow Guardsman." But now he had "changed his story" and was saying that he got the documents from a different source, "one we cannot verify." In the interview Rather asked: "Why did you mislead us?" Burkett replied: "Well, I didn't totally mislead you. I did mislead you on the one individual. You know, your staff pressured me to a point to reveal that source."

Burkett also denied forging or faking anything and said he thought the documents were real though he could not verify them. And he said that "when I sat down with your staff in the first face-to-face session, before I gave up any documents, I wanted to know what you were going to do with them, and I insisted that they be authenticated."

Rather didn't contest but seemed to accept what Burkett said about authentication as he confessed "the failure of CBS News to do just that, to properly fully scrutinize the documents and their source." He said the network should not have aired the documents. "It was a mistake," and CBS regretted it. He went on to report the CBS announcement that there would be an "independent investigation to examine the process by which the report was prepared." Richard Thornburgh, the former Bush I attorney general, and Louis D. Boccardi, retired president of the Associated Press, are now on the job.


Drew Friedman

Dan Rather

They have a lot to do, especially on the subject of Burkett and CBS News. Rather's producer, Mary Mapes, had been pursuing information about Bush's Guard service for five years and wound up at Burkett's door (recall what Rather said, "he did not come to us, we went to him"). Did Mapes's desire for a story rumored for years lead someone to create "evidence" for it and to get the evidence out in the post-Labor Day countdown to Election Day? And why did she chase the story for so long? Merely an old-fashioned hunger for news, or might one suggest political bias? Note well that it was Mapes who facilitated a phone conversation between Burkett (at his request) and Joe Lockhart of the Kerry campaign, which act drew from CBS News a statement asserting that it is "against CBS News standards to be associated with any political agenda."

More questions: Did CBS in fact check a key part of Burkett's original story—that he got the documents from a fellow Guardsman, unnamed in Rather's broadcast but identified by *USA Today* (who also got the memos from Burkett) as George Conn? Did Conn, who in February disputed Burkett's accusation that Bush aides conspired in 1997 to "cleanse" the president's Guard records of embarrassing information, really verify the documents? Conn has told *USA Today* that he knows "absolutely nothing about the Killian memos." And just how long was the verified "chain of custody" anyway? Finally, why did CBS so quickly accept Burkett as a reliable source? His partisanship is well known; so, too, his disrelish for Bush, whom he has called a liar with "demonic personality shortcomings."

Even as Thornburgh and Boccardi assume their role as media critics of the original *60 Minutes* story, the news division will continue to report on Bush's Guard years. A CBS spokeswoman said she didn't know whether Rather or Mapes was still on that story. Of course, it would be an outrage if they were. Like their once trusted source, they should be out of the story, entirely. ♦

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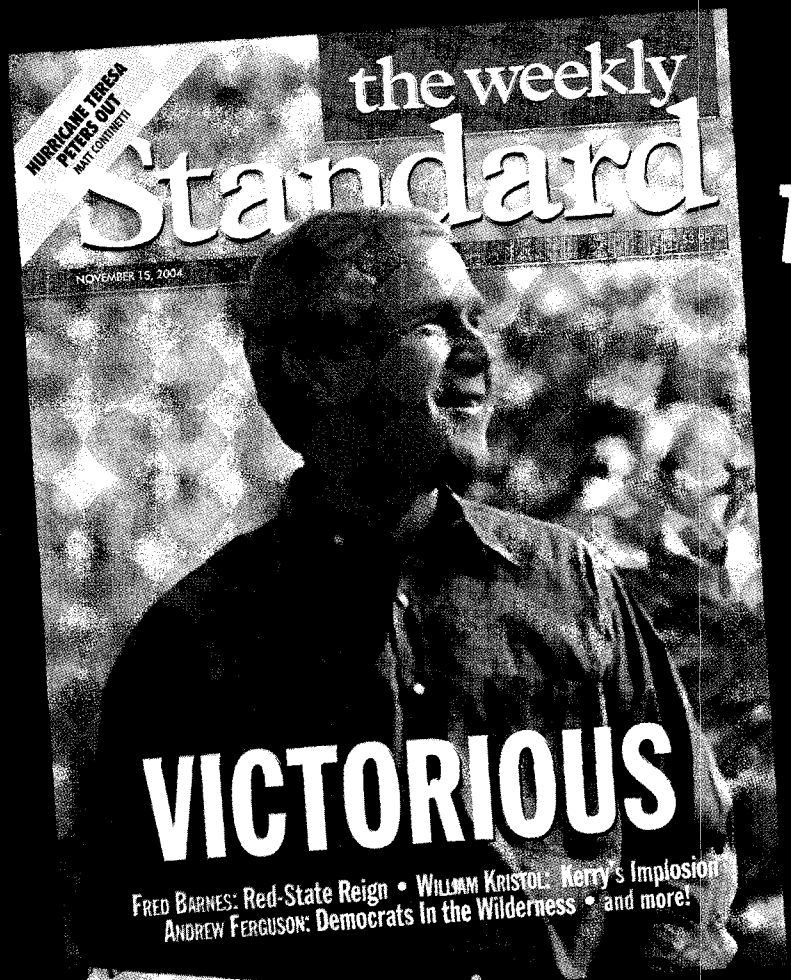

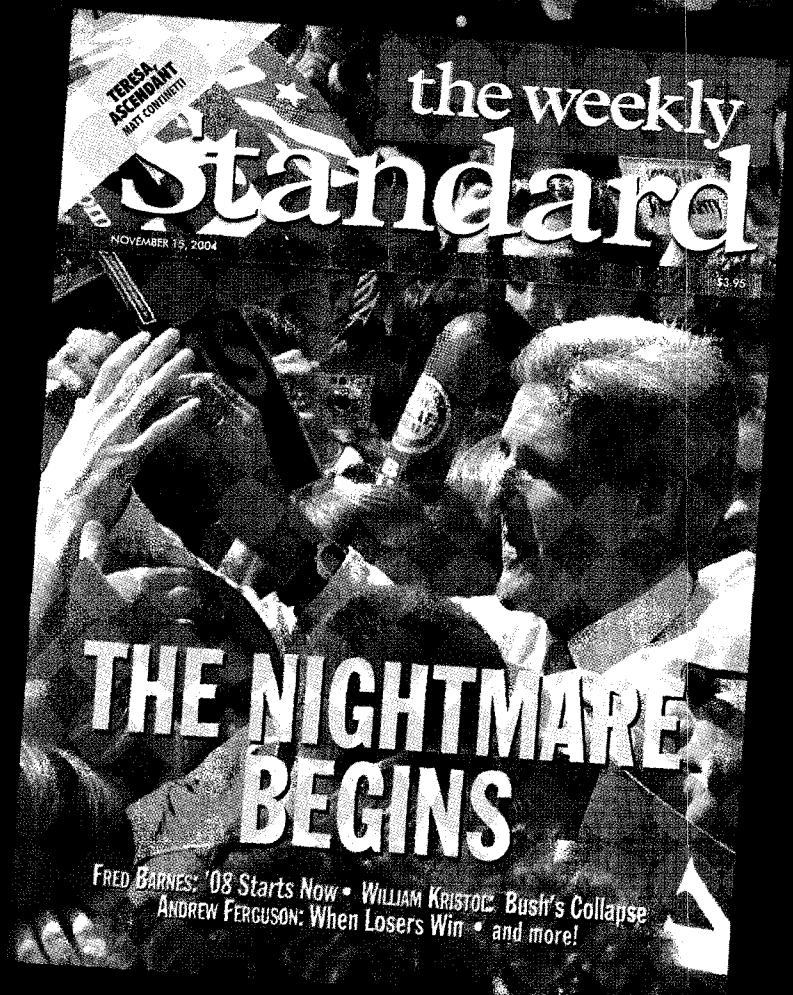

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Islamic Europe?

When Bernard Lewis speaks . . .

BY CHRISTOPHER CALDWELL

SELDOM HAS THE COURSE of European history been changed by a non-politician's throwaway remark in a German-language newspaper on a Wednesday in the dead of the summer doldrums. But on July 28, Princeton historian Bernard Lewis told the conservative Hamburg-based daily *Die Welt* that Europe would be Islamic by the end of this century "at the very latest," and continental politics has not been the same since.

Days before the third anniversary of 9/11, Frits Bolkestein of the Netherlands, the outgoing European Union competition commissioner, caused an uproar when he mentioned Lewis's remark in the course of an address at the opening of courses at the University of Leiden. Bolkestein warned that the E.U. will "implode" if it expands too quickly. It was a timely topic.

A few days from now, the E.U. commissioner for expansion, Günter Verheugen of Germany, will issue a report on whether to open negotiations with Turkey on E.U. membership. It is expected to be positive. The full commission must vote on the report in December, after which a decade of talks is envisioned. But since the Verheugen report is likely to be positive, and since the commission is expected to rubber-stamp the report's recommendations, and since no candidate state that has begun E.U. accession negotiations has ever been rejected, the process has the look of a *fait accompli*. Thanks to . . . what? . . . Günter Verheugen's mood, the peoples of Europe are about to see their fate yoked irrevocably to that of the Islamic world. Indeed, the *need* to forge a solemn bond with Islamic secularism of the sort that Turkey enjoyed after Kemal Atatürk came to power is the reason most often given for the indispensability of Turkish accession.

Bolkestein was thus addressing a continent-wide discomfiture. His speech was long. It was no rant. Alluding to the E.U.'s aspiration to become a multinational state, he drew listeners' attention to the fate of the most recent European power with that aspiration, the Austro-Hungarian empire just over a century ago. Austrians were culturally confident (Liszt, Richard Strauss, Brahms, Mahler, and Wagner were working in Vienna). They were prosperous and proud. The problem was that there were only 8 million of them, and expanding their country's frontiers brought them face to face with an energetic pan-Slavic movement. Once the Empire absorbed 20 million Slavs, it faced difficult compromises between allowing the new subjects to rule themselves and preserving its own culture. Rather like the E.U., the Empire was past the point of no return before it realized it was going anywhere in particular.

Bolkestein asked what lessons Europeans ought to draw from this history, as they consider welcoming Turkey. He then addressed two specific problems. First, that there was no logical end in sight to European expansion—once the E.U. accepts Turkey, it will have no principled reason to reject the considerably more European countries of Ukraine and Belarus. Europe is thus adding instability that it has neither the financial means nor the cultural solidarity to master. The second problem, Bolkestein warned, is that immigration is turning the E.U. into "an Austro-Hungarian empire on a grand scale." He alluded to certain great cities that will soon be minority-European—two of the most important of which, Amsterdam and Rotterdam, are in his own country—and warned that the (projected) addition of 83 million Muslim Turks would further the Islamization of Europe. It was this part of his speech—in which he referred to Lewis's projections—that made headlines around the world: "Current trends allow only one conclusion," Bolkestein said. "The USA will remain the only superpower. China is becoming an economic giant. Europe is being Islamicized."

A kind of chain reaction ensued. Two days after Bolkestein spoke, the *Financial Times* printed a letter that Franz Fischler of Austria, the outgoing E.U. commissioner for agriculture, had sent privately to his fellow commissioners. Fischler complained that Turkey was "far more oriental than European" and, worse, that "there remain doubts as to Turkey's long-term secular and democratic credentials. There could . . . be a fundamentalist backlash."

Europe's reaction was a collective *So now you tell us!* Taken together, Bolkestein's and Fischler's remarks seemed symptomatic of the political correctness that suffuses the issue of Turkish accession. A majority of the European parliament is anti-accession, the various national parliaments are against it, and the national populations are overwhelmingly opposed. It is the European Commission that has been driving the process—and now two prominent members of that very body, on the eve of leaving their political careers behind them, were saying it was all a big mistake that nobody dared to talk about. (Perhaps the only thing that infuriates the European man-in-the-street more than such bureaucratic shiftiness is the United States' bafflingly consistent support for Turkish E.U. membership.)

What is fascinating about the Lewis interview that gave rise to this round of European soul-searching is that it was not meant to be specifically about Europe. His interlocutor asked Lewis about developments in the Iraq war, the evolution of the Palestine question, the hopes for liberal democracy in Iran, and the prospects

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for defeating al Qaeda. (On this last subject, Lewis provided an unsettling answer: "It's a long process and the outcome is by no means certain," he said. "It works similarly to communism, which appealed to unhappy people in the West because it seemed to give them unambiguous answers. Radical Islam has the same force of attraction.") He was equally engaging when he described the European Union's break with the United States in terms of a "community of envy." ("Understandably, Europeans harbor some reservations about an America that has outstripped them. That's why Europeans can well understand the Muslims, who have similar feelings.")

But Europe's own Islamic future came up only incidentally. Asked whether the E.U. could serve as a global counterweight to the United States, Lewis replied simply: "No." He saw only three countries as potential "global" players: definitely China and India, and possibly a revivified Russia. "Europe," he said, "will be part of the Arabic west, of the Maghreb." What seems to have infuriated European listeners is that Lewis did not assert this as a risqué or contrarian proposition. He just said it, as if it were something that every politically neutral and intellectually honest person takes for granted.

Is it? Bolkestein said he did not know whether things would turn out as Lewis predicted. ("But if he *is* right," Bolkestein added, "the liberation of Vienna [from Turkish armies] in 1683 will have been in vain.") Bassam Tibi, a Syrian immigrant who is the most prominent moderate Muslim in Germany, seemed to agree with Lewis's diagnosis, even while rejecting his emphasis. "Either Islam gets Europeanized, or Europe gets Islamized," Tibi wrote in *Welt am Sonntag*. Having spent much of the past decade arguing for the construction of sensible Islamic institutions in Europe, Tibi seemed to warn that Europe did not have the ability to reject Islam, or the opportunity to steer it. "The problem is not whether the majority of Europeans is Islamic," he added, "but rather which Islam—*sharia* Islam or Euro-Islam—is to dominate in Europe." ♦

A la Recherche du Bush Perdu

European leaders may despise the president, but do they really want him to lose? BY GERARD BAKER

EUROPEAN PUBLICS, fed by their media a steady diet of horror stories from Iraq and Michael Moore-style caricatures of the Bush administration's criminality, could be forgiven for being mystified and dismayed by the course of the U.S. presidential election.

With polls suggesting President Bush continues to enjoy a small but potentially crucial lead over John Kerry, Pierre and Wilhelm must be shaking their heads and wondering how on earth anyone could even be considering reelecting the half-wit war criminal currently in the White House.

John Kerry was not lying when he said in March that the rest of the world was egging him on. An opinion poll this month by the University of Maryland and the polling company Globescan found Kerry cruising to a landslide in the blue-state territory of Europe.

Bush scored just 5 percent among the French; in Germany he trailed Kerry by 59 percentage points. Even in Britain the president enjoyed only 15 percent support. The Poles were the only Europeans to favor Bush—and even then, by the thinnest of margins.

But Europeans don't get to vote in U.S. elections, fortunately. If they did, Ronald Reagan would never have been president; instead there would have been 16 glorious years of Jimmy Carter and Walter Mondale.

But what about European governments? They might be expected to have a less monolithic attitude towards the choice before American voters.

It looks simple enough. The Atlanticists, those governments who backed the U.S.-led war in Iraq, could be expected to hope for a Bush victory. The Poles in particular have let it be known that they do not take kindly to being derided by John Kerry as part of "the coalition of the coerced and the bribed." Tony Blair has staked his political career on victory in Iraq; a win for John Kerry, whose assault on the Bush administration must apply equally to Blair, would surely sound the British prime minister's death knell.

In Paris and Berlin, on the other hand, it is easy to imagine that candles are being lit every night for the triumph of St. John the Multilateralist over the Evil One. It is hard to imagine the French looking forward to the prospect of another four years of being lectured to by Donald Rumsfeld.

But the calculations in the chancelleries and palaces of Europe are actually a little more nuanced than that. Take Britain first.

There's no doubting Blair's warm personal relationship with President Bush and the respect the two leaders have for each other's steadfastness. The White House is so enamored of Blair that it has even stopped talking to the Republicans' old international ally, the British Conservatives, the party of Winston Churchill and Margaret Thatcher, because of their attacks on Blair.

I bumped into a rising Tory politician visiting the Republican convention in New York earlier this month

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and asked him whether he had been getting the cold shoulder from GOP delegates. On the contrary, he replied gloomily. "As soon as they hear my accent they break into a broad smile, shake me warmly by the hand and say, 'I just wanted to say how much I love your prime minister, Tony Blair.'"

A defeat for Bush might sound like another ominous roll of the drums for Blair, after José María Aznar's loss in Spain earlier this year. If John Howard were also to lose next month in Australia's general election, could Blair really survive?

Blair himself has instructed party officials not to get involved in any way in the U.S. election, even rebuking some of his Labour colleagues who are begging to get out and help in whatever way they can the Kerry campaign.

But there are Machiavellian figures in Downing Street who don't necessarily see it the same way. A Kerry win might, at a stroke, remove Blair's biggest political liability within his Labour party—his close relationship with the despised Bush administration.

And though John Kerry might like to disdain Britain as a Bush lackey for its role in Iraq, he must know that any hopes he has for a renewed transatlantic relationship will still have to go through London, where an American will always find a more receptive audience than he will in Paris.

It's unlikely Blair himself sees it that way; his support for the Bush administration's foreign policy is genuine. But do not be surprised if he proves as adept at transitioning from Bush to Kerry, if Kerry wins, as he was from Clinton to Bush.

And what about Old Europe: the French and the Germans? Their diplomatic behavior of late certainly suggests they are digging in for a Kerry victory.

They have studiously avoided doing anything that might be of the slightest help to Bush in his reelection effort. At the NATO summit in Istanbul this summer they declined to help the United States out in any meaningful way in Iraq, denying the administration a diplomatic victory that might have deflated some of Kerry's coalition-building rhetoric.

At the same time they are doing nothing directly obstructive that might provide ammunition to the Bush campaign, enabling Republicans to point up the unreliability of Kerry's favored allies. They have instead carefully sat on their hands, apparently hoping against hope for change in November.

Reuters Photot Archive / Kevin Lamarque

Secretly rooting for the incumbent? Chirac and Bush, June 2004.

But would they really be happy with a Kerry win?

European governments are steadily beginning to realize that Kerry will ask the Europeans for all kinds of things they will be unwilling or unable to provide. The Democrat has staked his candidacy on getting more international support in Iraq and Afghanistan. He will find it hard to take "*Non*" for an answer from Paris. That may make for an uncomfortable series of discussions between President Kerry, President Jacques Chirac, and Chancellor Gerhard Schröder. Given the level of expectations on both sides, Old Europe might think it would be better off dealing with another four years of President Bush, who at least will expect nothing and get nothing from them.

There's another reason the French and the Germans might be quietly rooting for a Bush victory.

The unpopularity of President Bush, and Chirac's and Schröder's aggressive stand against him, is the only thing that gives the French and German leaders any sort of credibility in the eyes of their own people. Both head otherwise unpopular governments pursuing largely failed economic policies at home. In particular, anti-Bush sentiment keeps alive the French dream of uniting Europe in opposition to the United States—Chirac's famous counterweight to the superpower.

They need Bush.

In any case, the French governing elite would surely miss having someone to scorn in Washington. It feeds their innate self-belief and superiority complex. A senior French diplomat was recently overheard bemoaning to a fawning audience of like-minded souls the rising level of anti-French sentiment in America.

"They've stopped eating French fries in the Capitol. Some restaurants in New York no longer sell French wine," he said. Then, the sarcastic *coup de grâce*: "I've even heard that George Bush has stopped reading Proust."

They'd never be able to heap that kind of abuse on John Kerry. ♦

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Sister Kerry

The candidate's sibling causes a stir overseas—and at home. BY KATHERINE MANGU-WARD

EVERY MAN with presidential aspirations has a black sheep in the family. Heck, George W. Bush has *been* the black sheep in his family from time to time. John Kerry is no exception. After decades of living abroad—most recently in Indonesia—Diana Kerry, John's younger sister, has returned to the fold. And last week she put her foot squarely in John Kerry's mouth.

As the head of Americans Overseas for Kerry, Diana Kerry is a campaign official. And she was speaking in that capacity when, in reference to the invasion of Iraq, she said, "Australia has kept faith with the U.S., and we are endangering the Australians now by this wanton disregard for international law and multilateral channels."

The *Weekend Australian*'s Roy Eccleston, who broke the story, added: "Asked if she believed the terrorist threat to Australians was now greater because of the support for Republican George W. Bush, Ms. Kerry said: 'The most recent attack was on the Australian embassy in Jakarta—I would have to say that.'" She also mentioned the October 2002 bombing of two Bali nightclubs, in which many of the victims were young Australians.

Alert readers, including Amanda Sokolski on this magazine's website, quickly picked up on errors in Ms. Kerry's timeline. The Bali bombing took place long before Australia got mixed up with those nasty Americans and their "wanton disregard for international law." And the September 9 attack on the Australian embassy was perpetrated by Jemaah Islamiyah, al Qaeda's Southeast Asia franchise, which has considered Australia a target since well before the Iraq war. Evidently, the details of this timeline were blurry for Ms. Kerry, who has been busy shuttling around the globe on her brother's behalf for the last several months.

Diana Kerry

AP / Uwe Lein

So who is Diana Kerry? A lifelong expat drama instructor and translator, she's now in charge of scooping up as many votes as possible from the more than 4 million Americans living abroad—including 100,000 in Australia. As part of this effort, she has recently tried her hand at blogging. A post on the official campaign blog introduces Diana and explains her project: "Nothing is more important to me than international understanding," she says. Bolstering her credentials, Ms. Kerry reminisces about "a State Dinner in Hanoi at which I joined John some years ago—one of only three women present. The affection and regard that the Vietnamese held for him in his work to restore diplomatic relations was very moving."

On the *Americans Overseas for Kerry* blog, one finds a long thread accusing the Pentagon of deliberately blocking voter registration overseas. Writes Ms. Kerry: "I was outraged to read that the Bush Administration has chosen to block access to [the] Federal Voter Assistance Program website for U.S. citizens residing in at least 25 countries around the world. . . . The Pentagon has been engaged in a growing practice of denying vital voter registration information to U.S. voters over the past several months."

The charges against the Pentagon are repeated on another (unofficial) blog aimed at overseas Democrats—in fact, such complaints are a staple of the bulletin boards and official notices on such sites. Luke Robinson, a London-based website designer, lightly floats Ms. Kerry's conspiracy theory over at the site he moderates, *ExpatsAgainstBush.org*: "I wonder if this could be due to any perceived Democratic bias in the expat voting population this year? No, that would be too far into tinfoil hat territory."

Perhaps interested in the goings-on of one of their own, bloggers have been following the story of Diana Kerry's fearmongering and her role

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in the campaign generally with interest. The commentary falls somewhat short of the avalanche of information and reporting that many blogs were rightly lauded for when they broke Rathergate. But the passion the commenters bring to the subject suggests that if John Kerry reaches the White House, Diana is the blogosphere's leading candidate among the three Kerry siblings to play the Billy Carter role.

After the *Command Post* blog noted the *Weekend Australian* article, the comments section featured these reflections: "Dianna [sic] Kerry and John Kerry represent the Deaniac Demoncrat [sic] wing of the Islamofascist al-Queda [sic] party. . . . That is the Flip side! On the Flop side Diana and John Kerry represent the Michael Moore Muslim Moonbat brigades."

On the *Rabble.ca* chatboard, "Screaming Lord Byron" posted this insightful note after seeing Ms. Kerry speak earlier in the summer: "Had I seen her around town yesterday, I'd have thought 'What is Senator Kerry doing walking around Calgary dressed as a middle-aged businesswoman? That can't go down well with the swing voters.'"

On a more serious note, "Captain Ed" of the *Captain's Quarters* blog wrote: "Diana Kerry acts on orders from her brother John to undermine the Australian alliance."

For the second time in as many weeks, blogger conspiracy theorists may be onto something. There has been no discernible fallout from Ms. Kerry's comments at the campaign headquarters. Perhaps this is because she could plausibly offer the "just following orders" defense. After all, she was speaking about a nation that her brother has called part of the "coalition of the coerced and the bribed."

Blood, they say, is thicker than water, so perhaps Kerry has forgiven his little sister for causing a stir. But another cliché might also be fruitfully applied to the Kerry campaign's situation: With friends like these, who needs enemies? ♦

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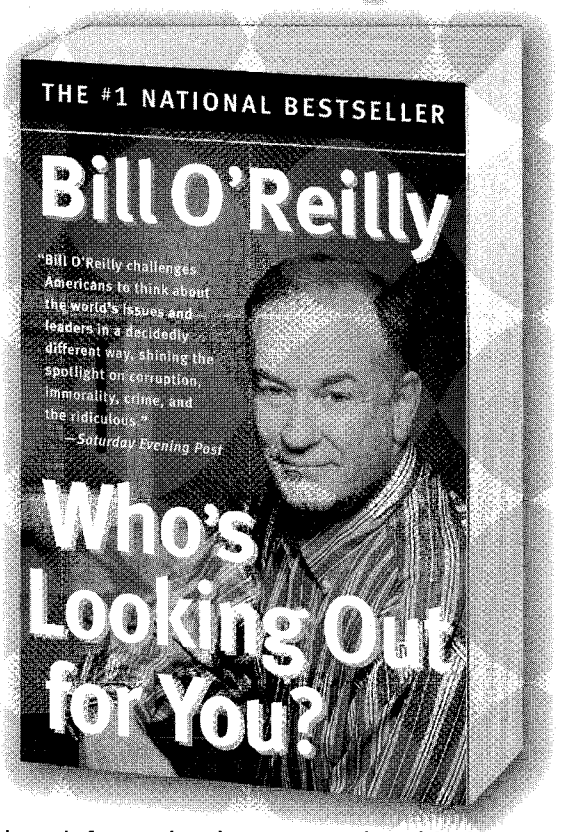

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Dan Rather's Day of Reckoning

It didn't start with Ra^th^ergate

By John Podhoretz

What if, some day or night, a demon were to steal after you into your loneliest loneliness and say to you: "This life as you now live it and have lived it, you will have to live once more and innumerable times more; and there will be nothing new in it, but every pain and every joy and every thought and sigh and everything unutterably small or great in your life will have to return to you . . . "

—*Nietzsche on the "eternal return" in* The Gay Science

CBS News airs a report about a Vietnam-era controversy. Almost immediately the report comes under harsh attack, its credibility and essential honesty challenged. There's a huge uproar, complete with calls for a congressional investigation. CBS is compelled to acknowledge certain errors in its handling of the story, though senior officials say pointedly that no one has challenged its basic thrust.

Does this sound familiar? It is, but this is not just a quick-and-dirty recap of the current mess at CBS. For the few CBS News staffers who have been at the network for more than 30 years, the events of the past few weeks must make them feel they're trapped inside Nietzsche's "eternal return." This is the third occasion over the past 32 years in which CBS News has been caught behaving unethically and irresponsibly in the reporting and editing of a hot-button issue involving the United States, the Vietnam war, and the behavior and conduct of senior officials in Washington.

One of those CBS employees with a long memory is Dan Rather, who has been with the network's news division for 42 years. If you want to understand why Rather is being so recalcitrant and finding it so difficult to make a full acknowledgment of his role in perpetrating a colossal journalistic and political fraud—and why he was so adamantly opposed to an internal investigation of his now-infamous story about George W. Bush's National Guard service—you need to understand that Rather saw his network weather two previous and surprisingly similar tempests.

It did so in the first case, in 1971, by refusing outright to have its programming examined by Congress and winning plaudits and awards for doing so. The offending program was a documentary entitled *The Selling of the Pentagon*. It stands even today as a monument in the history of American broadcasting, an award-winning subject of veneration in journalism schools—despite the fact that the producer lied to sources when he assembled the documentary and used some astoundingly dishonest editing to change the meaning of statements by two Pentagon officials caught on film by CBS (one of whom later sued the network to little effect).

For example, according to a report by Claude Witze in *Air Force* magazine, five sentences in an interview with Marine Col. John A. McNeil "came from four different spots on the camera record, and the sequence was rearranged." In addition, "CBS distorted the film to make its viewers think Col. McNeil said" something that was actually a paraphrase of a remark by the prime minister of Laos. The purpose, in Witze's words, was "to make McNeil's presentation sound inept, stupid, wrong, vicious."

At another point in the documentary, the program's host, Roger Mudd, was seen asking a question of Assistant Secretary of Defense Daniel Z. Henkin. The program dealt with the Pentagon's public-relations campaign in the United States and abroad. Mudd asked, "Does the sort of information about the drug problem you have and racial problem you have—is that the sort of information that gets passed out at state fairs by sergeants who are standing next to rockets?"

"No," Henkin replied, "I wouldn't limit that to sergeants standing next to any kind of exhibit."

The problem was that this exchange was concocted. Henkin's answer had been to a question about the Soviet

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threat. Later, producer Peter Davis shot film of Mudd asking the question quoted above and then edited it in.

The documentary concluded with Mudd's ominous words: "On this broadcast, we have seen violence made glamorous, expensive weapons advertised as if they were automobiles, biased opinions presented as straight facts. Defending the country not just with arms but also with ideology, Pentagon propaganda insists on America's role as the cop on every beat in the world."[1] According to the Museum of Broadcast Communications, "the complaints about the show began only 14 minutes after it went on the air with phone calls to the network."

Sound familiar?

The iconic status of *The Selling of the Pentagon* in media circles, which was instantaneous, was certainly helped along by its bald and unapologetic hostility to the display of American military power in any form, as evidenced by Mudd's concluding words. But even more so, it was due to the network's defiance of a House committee's subpoena of the documentary's outtakes and other reporting.

A Democratic congressman from Louisiana named F. Edward Hebert, then chairman of the House Armed Services Committee, supplied some footage to Davis and his team of an interview he had filmed with a former Vietnam POW. Davis told Hebert's press secretary "the videotape would be used for a POW special on CBS." Outraged to have been used by CBS to aid its case that the Pentagon was improperly marketing itself, Hebert went on the attack. CBS re-aired the show a few days later with 20 minutes of responses after the airing by Hebert and others—followed by a rebuttal by CBS News president Richard S. Salant, who said pointedly on the air that "no one has refuted the essential accuracy" of the show.

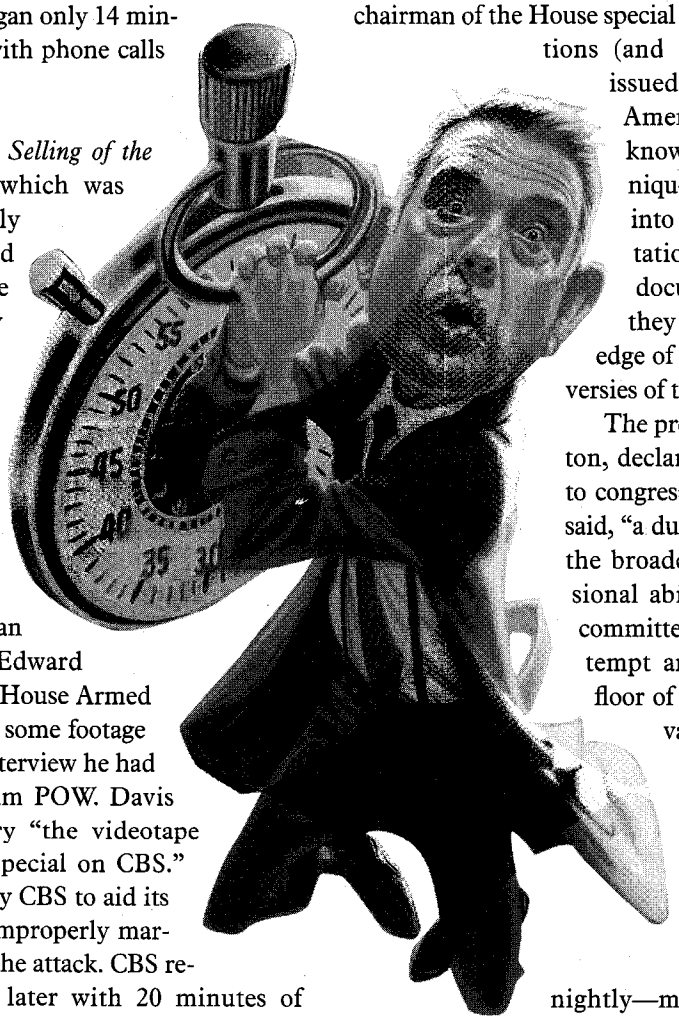

Illustration by James Bennett

If you want to know where Rather got the idea of saying, "Those who have criticized aspects of our story have never criticized the major thrust of our report," look no further.

Salant's aggressive refusal to admit any wrongdoing inflamed congressional passions. Rep. Harley O. Staggers, chairman of the House special subcommittee on investigations (and a Democrat like Hebert) issued a subpoena because "the American public has a right to know and understand the techniques and procedures which go into the production and presentation of the television news documentaries upon which they must rely for their knowledge of the great issues and controversies of the day."

The president of CBS, Frank Stanton, declared CBS would not submit to congressional bullying. He had, he said, "a duty to uphold the freedom of the broadcast press against congressional abridgment." Staggers's subcommittee voted to hold CBS in contempt and sent the matter to the floor of the House, where CBS prevailed by 50 votes.

Stanton was celebrated and feted for his supposedly brave stand, which came at a time when CBS's evening newscast with Walter Cronkite had 40 million viewers nightly—making Stanton far more powerful and influential than any individual congressman, especially with the combined might of other broadcast networks and the elite media in lockstep behind him.

In 1982, CBS aggressively and successfully fought back against a libel suit filed by William Westmoreland, the retired general who had led U.S. forces in Vietnam. Another CBS documentary, this one entitled *The Uncounted Enemy: A Vietnam Deception*, had accused Westmoreland of knowingly understating the size of the Vietcong forces against which U.S. troops battled during the 1968 Tet offensive. The libel suit only went to trial because CBS

[1]Lest there be any doubt about the political leanings of the show and its creator, note this: Four years after writing these words for Mudd to speak, producer-director Peter Davis collected an Oscar for a documentary called *Hearts and Minds*. The Oscar ceremony came just 22 days before the last American helicopter pulled away from the roof of the American embassy and Communist North Vietnam swallowed the South. Davis's producer on the film, Bert Schneider, read a telegram from Dinh Ba Thi, a Vietcong leader, offering "greetings of friendship to all American people." While the audience at the Dorothy Chandler Pavilion cheered, the backstage workers who actually knew people who had been killed by the Vietcong nearly rioted, and later Frank Sinatra read a statement disavowing the politicizing of the Academy Awards.

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News commissioned an internal investigation of its own broadcast following a damning *TV Guide* story that found many instances of unethical conduct comparable to those in *The Selling of the Pentagon*.

Had CBS refused to do that internal investigation, the lawsuit would almost certainly have been dismissed. This was the source of great bitterness at CBS, especially when the network had behaved so differently back in 1971. As Tom Shales of the *Washington Post*, the network's mouthpiece in the print media, put it at the time,

> Another hallowed name that pops up in relation to this affair is that of Frank Stanton, the former CBS Inc. president who stood up to Congress and refused to turn over unused film from *The Selling of the Pentagon* in 1971. There are no Frank Stantons at CBS anymore. "Neither we nor anybody else is going to have a Frank Stanton again," one insider glumly notes.

Rather's strenuous efforts to block the launch of an internal investigation of his September 8 report on *60 Minutes* must be understood in light of the consequences to his workplace 21 years ago. Those consequences were severe. For a time, CBS lost its libel insurance. And when, in 1987, CBS came under new management by the cost-cutter Larry Tisch, the network's news division was the hardest hit. The documentary unit that had produced both these shows and other fabled programs over the decades (most famously Edward R. Murrow's *Harvest of Shame*, the migrant-workers exposé first broadcast in 1960) faded away—something that, one could argue, would not have happened but for the CBS decision to investigate its own documentary.

What has happened over the past weeks is the culmination of a 40-year-long indictment that has, at long last, led to a slam-dunk conviction.

In 1971, CBS News not only weathered the storm but triumphed over it. In 1982, CBS News survived the storm, wounded but still standing. In 2004, CBS has been devastated by the storm, and there's reason to believe it will never quite recover. The saga of CBS and its eternal return to Vietnam is almost over.

It's already become a cliché to say that over the past two weeks we've been witness to a revolutionary moment in the history of media, the moment when the calcified Establishment that has dominated the dissemination of news in the United States for most of a century shattered like the fragile hip of an octogenarian.

From the bloggers who blew the whistle on the fabrications to the millions of Internet news consumers who could not get enough of every twist and turn in the unbelievable unfolding story, there was a definite sense that history was turning on a dime, that the exposure of CBS's infamy by non-journalists with a new ability to communicate through the Internet heralded the dawn of the New Information Age.

That's why, even though the precipitating event was a genuine outrage—CBS News's breathless use of forged documents accusing George W. Bush of disobeying a direct order from his National Guard superior in an all-too-obvious effort to sway the opinions of voters only 48 days before the 2004 election—the outrage has been accompanied by a spirit of giddiness and exhilaration almost from the moment the onslaught began.

This is a moment that's been a very long time coming. For four decades now, conservatives have been convinced, with supreme justification, that the institutional, ideological, and cultural biases of the mainstream media represented a danger to the causes in which they believe and the ideas they hold dear. What has happened over the past weeks isn't the beginning of a transformation. It's the culmination of a 40-year-long indictment that has, at long last, led to a slam-dunk conviction.

Some have wondered just how it is that Dan Rather could have adopted an aggrieved and persecuted tone in the days after the airing of his *60 Minutes* segment—accusing those who revealed the typographical inconsistencies in the fabricated documents of being "partisan political operatives" doing a Republican administration's dirty work. The answer to this question also lies in the past—at the very beginning of the confrontation between the mainstream media and conservatives disgusted and appalled by them.

When the conservative movement emerged in the United States in the 1950s, its focus was primarily on self-consciously elite institutions—universities primarily—and their role in undermining the fundaments of Christian tradition. The media were not yet the great adversary. That notion would begin to form in 1964, with Barry Goldwater's pathbreaking march to the Republican nomination and then his disastrous failure to win the presidency away from Lyndon Johnson.

Goldwater's nomination was in part the result of brilliant "grass-roots" organizing among the party's youth wing. As GOP delegates gathered in San Francisco to choose the party's nominee in July 1964, it was clear that the party's Eastern establishment and its candidates could not withstand the energy, enthusiasm, and high spirits of

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the Goldwater kids and their Arizona standard-bearer.

The media didn't see enthusiasm. They saw Hitler youth. It was routine in news stories from the convention, both broadcast and in print, for the Goldwaterites to be likened to "shock troops." In his book *The Making of the President 1964* (published a year later), Theodore H. White spake the conventional wisdom for the Ages: "This was a new thing in American conventions—not a meeting, not a clash, but a coup d'etat."

This sort of talk, which was not confined to opinion columns, understandably aggrieved the Goldwaterites. And at one point during the convention, a journalist ended up literally cross-wise of the Goldwater kids. NBC correspondent John Chancellor had stationed himself and his camera crew at a spot on the floor of the Cow Palace, the San Francisco venue that was home to the convention. When a pro-Goldwater demonstration broke out and began moving its way across the floor, Chancellor, asserting a heretofore unknown journalistic privilege, wouldn't move out of the way.

The Goldwater kids surrounded him, shouting. Someone went to get the security guards, who asked Chancellor to move on the grounds that he was disrupting a private gathering. He refused, and they carried him out bodily. "Here we go down the middle aisle," he breathlessly told NBC viewers. "I've been promised bail, ladies and gentlemen, by my office. This is John Chancellor, somewhere in custody."

Today, this entire incident seems like a parody out of a Christopher Guest movie—*Waiting for Goldwater*, perhaps, or *Best in Convention*. But in the world of the mainstream media, nobody was laughing. It was universally believed that Chancellor had nearly met his end at the hands of an angry mob. The Chancellor spectacle contributed to the general media portrait of Goldwater and his candidacy as a dangerous reactionary explosion that needed to be bested at all costs.

And it was universally believed by Goldwater followers at the conclusion of the 1964 election cycle that conservative ideas and conservative politicians would never receive fair treatment at the hands of the media—that, in fact, the media would do everything in their power to destroy both.

Flash forward five years, to November 3, 1969. That night, President Richard Nixon delivered his famous "silent majority" speech detailing his plan to draw down American forces in Indochina in favor of what he called Vietnamization. By any reckoning, the speech was a rhetorical and political triumph, shooting Nixon's favorable ratings into the stratosphere and generating more supportive mail, telegrams, and phone calls than any White House address ever has. But as ever with Nixon and his men, they focused not on their success but on the discussion of the speech in its aftermath by network commentators like CBS's Eric Sevareid.

Ten days later, the White House struck back in the person of Vice President Spiro T. Agnew, who went to Des Moines to complain that Nixon's "words and policies were subjected to instant analysis and querulous critics." Agnew pointed out that the "70 million Americans" who tuned in to hear the president became a captive audience for "a small band of network commentators and self-appointed analysts, the majority of whom expressed . . . their hostility to what he had to say."

The commentators who made such quick sport of the president's speech, he said, were "nattering nabobs of negativism." That phrase (coined by a White House speechwriter named William Safire) has remained in the national consciousness ever since, but the negativism of the media was not the heart of Agnew's complaint. That came when Agnew suggested the networks were guilty of liberal bias, that the bias was mutually reinforcing, and that the biased men running the networks possessed too much power over the American people.

"A small group of men, numbering *perhaps* no more than a dozen anchormen, commentators, and executive producers, settle upon the twenty minutes or so of film and commentary that is to reach the public," Agnew said. "This selection is made from the 90 to 180 minutes that may be available. Their powers of choice are broad. They decide what forty to fifty million Americans will learn of the day's events in the nation and in the world."

This small group of men, Agnew went on, "live and work in the geographical and intellectual confines of Washington, D.C., or New York City. . . . We can deduce that these men thus read the same newspapers and draw their political and social views from the same sources. Worse, they talk constantly to one another, thereby providing artificial reinforcement to their shared viewpoints."

Then he lowered the boom. "Is it not fair or relevant to question its concentration in the hands of a tiny and closed minority of privileged men, elected by no one and enjoying a monopoly sanctioned and licensed by government?" Agnew was referring to the fact that broadcast networks are made up of television stations that use airwaves to transmit their wares. Those airwaves were declared public property by the Federal Communications Act of 1934, and television stations are granted licenses to use them so that they can broadcast in the public interest.

"I am not asking for government censorship or any other kind of censorship," Agnew said. "I am asking whether a form of censorship already exists."

In a 1972 book on Agnew called *The Impudent Snobs*,

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the conservative journalist John R. Coyne Jr. reports that Agnew received a warning about his actions (whether before or after the speech Coyne does not say) from none other than former president Lyndon Johnson. "Young man," Johnson told Agnew, "we have in this country two big television networks, NBC and CBS. We have two news magazines, *Newsweek* and *Time*. We have two wire services, AP and UPI. We have two pollsters, Gallup and Harris. We have two big newspapers—the *Washington Post* and the *New York Times*. They're all so damned big they think they own the country. But young man, don't get any ideas about fighting."

Johnson got it right. Within days, every network nabob had fired back. CBS anchorman Walter Cronkite, then considered the most trusted man in America, described it as "an implied threat to freedom of speech in this country." His boss, the ineffably noble Frank Stanton, said the speech was "an unprecedented attempt by the vice president of the United States to intimidate a news medium which depends for its existence upon government licenses." NBC News chief Julian Goodman said Agnew "would prefer a different kind of television reporting—one that would be subservient to whatever political group was in authority at the time."

The public thought differently. *U.S. News and World Report* said that in the first few days after Agnew spoke, the White House "received more than 29,000 telegrams and seventeen sacks of mail. The communications were running forty to one in [Agnew's] favor."

Nixon and Agnew were, of course, sadly and tragically wrong in one respect. The American people were entirely capable of drawing their own conclusions about the nation's political direction despite media bias, as they proved by reelecting Nixon by the largest margin in American history in 1972 and eight years later sending Ronald Reagan to the White House in a landslide.

The Agnew speech gave profound voice to the growing sense among non-liberals in the United States that their concerns, their interests, and their views were either not reflected or were under direct attack by the media. The ways in which the media misreported and misrepresented news events and political shifts became a subject of consuming interest in neoconservative and conservative intellectual and journalistic precincts, from *Commentary* and the pre-Clinton *American Spectator* to *National Review* and *Human Events*.

Academics began to examine the issue of media bias, and social scientists S. Robert Lichter and Stanley Rothman demonstrated that conservatives' feelings weren't merely an expression of paranoia with a groundbreaking 1981 study of 240 journalists. It revealed that 94 percent of them had voted for Johnson in 1964, that 81 percent had voted for McGovern in 1972, and the same 81 percent voted for Carter in 1976. "Fifty-four percent placed themselves to the left of center," Lichter and Rothman reported, "compared to only 19 percent who chose the right side of the spectrum."

Throughout the 1970s, '80s, and '90s, organizations like Accuracy in Media and the Media Research Center dedicated themselves to the laborious (pre-Internet) collection of examples of media bias in print and on television. The evidence they gathered, like the social science data that continued to show an overwhelming preference for liberal ideas and Democratic politicians in the decades after the first Lichter-Rothman study, was overwhelming and unimpeachable.

And yet it remained the stated position of most major American journalists that there was and is no bias in the media. In response to Agnew's speech, Eric Sevareid of CBS said, "I don't even know what a liberal is"—and Sevareid was CBS's on-air commentator! Nearly 30 years later, Lesley Stahl of CBS said flatly, "I had my opinions surgically removed when I became a network correspondent."

Dan Rather is still trying this trick, asserting that "anybody who knows me knows that I am not politically motivated, not politically active for Democrats or Republicans, and that I'm independent." But it no longer matters much what he may or may not say. He has destroyed himself and his news organization not because he is biased—which of course he is—but because his bias blinded him to the obvious truth that the memos he and his team believed (and/or desperately hoped) might help derail the reelection bid of George W. Bush were fabricated. They believed this because they wanted to believe it.

Dan Rather imagines that he is still battling Spiro Agnew, with the voice of the sainted Frank Stanton driving him onward. But here's the thing: When Stanton took his uncompromising stand on behalf of a scurrilous documentary that violated every journalistic standard of decency, he did something corrupt, not noble. And if there had been a blogosphere in 1971, he wouldn't have survived; *The Selling of the Pentagon* would today be remembered as a low point in American journalistic history rather than as a legend.

Dan Rather's eternal return ends here with the collapse of his reputation and the collapse of the 20th-century American news industry in which he was one of the last grand potentates. And it is a bleak end, unless he can console himself with the thought that he didn't fail to live up to the standards of his predecessors. He followed perfectly in their footsteps. ♦

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The Case of the Phony Memos

For an anonymous source, Bill Burkett sure talked to a lot of people

By Matthew Continetti

Listen to DNC and Kerry campaign officials talk about the CBS memo scandal, and you might start to think that they protest too much. Just read the email Howard Wolfson sent to the press corps the other day. Wolfson is a political consultant, a former spokesman for Hillary Clinton, and a senior adviser at the Democratic National Committee. He's in charge of Operation Fortunate Son, the DNC political outfit meant to attack President Bush's service in the National Guard, but he wants you to know he is shocked—shocked—to find that the memos Dan Rather said came from the personal files of Lt. Col. Jerry Killian are actually forgeries.

The Democrats' rap on George W. Bush's service in the Texas Air National Guard runs roughly as follows: Political pressure must have helped Bush enlist in the Guard in 1968. There are gaps in his service record, notably some months in 1972-1973 when Bush was working on a political campaign in Alabama. There are missed medical exams and flight groundings, and some documents have never been found. The questions haven't been answered to the satisfaction of the president's critics—any more than the charges have been proved. And all this may be beside the point; Bush's activities from 1968 to 1973 have had no impact on voters' opinions of him. Yet.

Wolfson's job is to make Bush's Guard years matter. But, again, make no mistake: He wasn't involved with the forged memos. "Republican allegations of a 'Vast Left Wing Conspiracy' designed to expose the truth about the President's military service are laughable," he writes in his email. "No conspiracy is necessary to make clear that the President used strings to get into the Guard, missed his required physical, and failed to fulfill his duty." Is it even worth asking how the forgeries came to CBS? Nope. "The only outstanding questions here," he continues, "will be answered when the President steps forward, stops hiding behind spokespeople, and comes clean with the American people about his service."

Joe Lockhart agrees. Lockhart is the former Clinton spokesman who now serves John Kerry as a senior adviser. Shortly before *60 Minutes* aired its now infamous report on September 8, CBS producer Mary Mapes arranged for Lockhart to have a conversation with Bill Burkett, the retired National Guard officer who gave CBS the forged documents. "It's baseless to say the Kerry campaign had anything to do with this," Lockhart told the Associated Press last week. Besides, *USA Today* reported, the documents "never came up in his conversation," which "lasted just a few minutes." However, *theoretically*, the documents could have come up before he talked to Burkett. "It's possible that the producer"—he means Mary Mapes—"said they had documents," Lockhart said. In any case, the conversation wasn't important, he said, because he speaks "to a lot of people." And the conversation was so meaningless, in fact, that once it was over, he told Kerry campaign manager Mary Beth Cahill about it, and she, in turn, told John Kerry, who, the *New York Times* reported, "did not think anything needed to be done in response."

And here is Terry McAuliffe, the chairman of the Democratic National Committee, on the forgeries: "I'd ask Karl Rove if he has any knowledge of these documents or if he or anyone close to him had seen the documents ahead of time," he told reporters on September 10, two days after the *60 Minutes* piece aired. Last week, McAuliffe had a new suspect: sometime GOP consultant Roger Stone. Stone "refused to deny that he was the source of the CBS documents," McAuliffe said in a press release. "Will Ed Gillespie or the White House admit today what they know about Mr. Stone's relationship with these forged documents?"

McAuliffe's words sound desperate. But he needn't worry. So far, no one has said the Democratic National Committee or the Kerry campaign produced the forged documents. As this magazine goes to press, it's generally agreed that Bill Burkett, the former Texas National Guard

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officer who has carried out a one-man crusade against the Guard since he was discharged in the late nineties, gave the phony memos to CBS, and most likely produced them himself. Burkett has a history of unreliability. He told CBS that another Guard officer, a man named George Conn, gave him the documents, but last week changed his story and said a woman named Lucy Ramirez was his source, and that an intermediary passed them along at a Houston livestock sale in April. No one has been able to locate Lucy Ramirez or the man from the livestock sale.

What remains murky, however, is the extent to which Bill Burkett, *60 Minutes*, and the Kerry campaign were all talking to one another in the run-up to the September 8 broadcast. Last week, various media outlets reported on multiple contacts between Burkett, *60 Minutes* producer Mary Mapes, and Kerry campaign officials like Lockhart and Sen. Max Cleland. It's likely more will be revealed in the coming weeks. All of which suggests the story here isn't just CBS's credulity when Burkett provided the network with fakes. It's how CBS became, either unwittingly or consciously, an arm of the Kerry campaign's opposition research team.

Indeed, a look back at the months leading up to the *60 Minutes* broadcast reveals that, at every stage of the National Guard segment's production, Democratic politicians or operatives cooperated with CBS and actively publicized the segment. Let's go through the chronology.

July 2004: "It is time Bush came clean . . ."

Mary Mapes, the *60 Minutes* producer behind Dan Rather's piece on Bush's National Guard service, lives in Texas. She's investigated Bush's service record for five years. She is not alone, of course. Other news organizations have looked again and again at Bush's Guard record, always inconclusively. The story bubbled up in 2000, then receded, then bubbled up again last winter, then receded again.

In July, slowly but steadily, as Mapes worked to secure long-rumored documents on Bush and the Guard, the story percolated once more. On July 15, James Moore, a journalist and author of a couple of anti-Bush books and one of CBS's sources, wrote a lengthy article for the online journal *Salon*. *Salon*'s Washington bureau chief is Sidney Blumenthal, the left-liberal journalist and Democratic publicist. The news peg for Moore's article was the Pentagon's announcement in July that some records relating to Bush's first months in the Guard had been destroyed accidentally. For Moore, the files were destroyed "accidentally"—he always puts scare quotes around the word.

In his article, Moore told Bill Burkett's story at length. Burkett, the former Guard officer, first surfaced in interviews for Moore's book *Bush's War for Reelection*, published last winter. In those interviews, Burkett claimed that in 1997 he overheard Joe Allbaugh, Bush's former chief of staff, and Gen. Danny James, the National Guard's commander in Texas, discuss purging Bush's Guard records. Burkett also claimed that 10 days later he came across portions of Bush's files in a wastepaper basket. His evidence? He had none. Moore wrote that all those involved deny Burkett's account, but, he continued, "Burkett remains unwavering, convinced there was a covert effort to leave enough of a trail to show Bush served during the months in question." It's clear from the article that Moore is sympathetic to Burkett's claims. "Is it possible," Moore wrote, that Bush's payroll records were "accidentally" destroyed?

It was a question Democrats were happy to answer. On July 20, Terry McAuliffe held a conference call with reporters. Holding conference calls is what national party chairmen do, of course, but this call was unusual. Apropos of nothing, McAuliffe brought up the National Guard. "It is time Bush came clean with the American people about what he was doing during the Vietnam War," McAuliffe said. Then he announced the creation of a new website. He read the URL aloud: *www.democrats.org/wherewasbush*. Go to the website today, and you see a picture of Bush looking smug. "The right-wing attack machine doesn't want you asking questions about Bush's record," it reads, "and they're doing everything they can to change the subject." The website was created so they can't.

August: "So I gave them the information to do it with."

In August, the presidential campaign swung into high gear, and so did DNC efforts to attack Bush's National Guard record. On August 11, Bob Tuke made an appearance on Nashville talk radio. Tuke is the Tennessee chairman of Veterans for Kerry, and an influential Tennessee Democrat. During the show, he took calls from listeners and compared Bush's service in the Guard with Kerry's service in the Navy. Soon, Tuke said, "We may also know why Bush failed to show up for his medical exam that caused him to lose his flight status."

At first blush, Tukes's comments are simply representative of a general Democratic strategy: Compare Bush's Vietnam service to Kerry's at any point possible. This has been a focus of the Kerry campaign for some time. At a breakfast with reporters during the Democratic National Convention, for example, Bob Shrum, the Kerry campaign's chief strategist, said that if Republicans wanted to attack Kerry on Vietnam, then that was a fight he was willing to have. "The Bush people can talk about that if they want," he said, smirking. The

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idea was that any time you contrast Bush's service with Kerry's, Kerry wins.

Yet Tuke's comments, if you think about it, were more specific than Shrum's. And he was alluding, after all, to an unresolved mystery—a mystery that would be addressed, once again, in one of the forged Killian memos.

It was in August, too, that the first of those memos reached CBS. Sometime in the middle of the month, Mapes, accompanied by CBS reporter Mike Smith, met with Bill Burkett and his wife in a Baird, Texas, pizza place. At the meeting, Burkett gave Mapes and Smith two photocopies of documents which he said were from Lt. Col. Jerry Killian's personal files. Mapes wasted no time. She called New York and told CBS brass that "she had finally tracked down a source" who possessed the long-rumored memos, according to the *Washington Post*. Shortly afterward, Dan Rather flew to Texas, where he met with Mapes and Burkett. After five years of work, Mapes had her story.

Events progressed quickly. During the weeks when Burkett was talking with Mapes, Smith, and Rather, he was also trying desperately to contact the Kerry campaign. Burkett spent much of his time online, posting messages to an email newsletter for Texas Democrats, and in his posts you sense his frustration at Democrats' reluctance to listen to his advice. In one message, Burkett wrote he'd been in contact with the Democratic National Committee, but to no avail. The DNC was "afraid to do what I suggest." What Burkett suggested was using "down and dirty" tactics against the president.

On August 21, with the Swift boat attacks on Kerry raging, Burkett posted another message. He was less pessimistic this time. "I spent some time on the phone with the Kerry campaign seniors yesterday," he wrote. After getting past "seven layers of bureaucratic kids," he continued, he finally reached former senator Max Cleland. "I asked if they wanted to counterattack or ride this to ground and outlast it, not spending any money. [Cleland] said counterattack. So I gave them the information to do it with," Burkett went on. He added that he had not heard from the Kerry campaign since. But he was being impatient. Eventually, he would.

Cleland, for his part, did not think the call from Burkett was unusual. "People call me with stuff all the time," he told AP last week. "I don't know whether this guy is legit or fraudulent. I have no idea. I just referred him to the campaign." After the call ended, Cleland says, he let the Kerry campaign's opposition research team know about Burkett, and gave them the former guardsman's name and contact information. In addition to Cleland, Burkett wrote in his email post that he had contacted another Kerry surrogate as well, former Vermont governor Howard Dean. (Dean has declined to say whether or not he spoke with Burkett.)

Meanwhile, there was progress on another front. Remember that the *60 Minutes* story was not solely about the forged memos. It was also about Ben Barnes, the former speaker of the Texas House of Representatives. For years there had been rumors that Barnes pulled strings to get Bush into the Texas Guard, but he had never gone public with his story.

That was about to change. To get a sense of what is on the minds of Democratic party insiders, it's a good idea to visit liberal journalist Joshua Micah Marshall's blog, *Talking Points Memo*. If you had visited his website on August 22, you would have been treated to the first hint that Ben Barnes was about to go public with his story.

The timing was propitious. Late August, you'll recall, was a difficult time for Democrats. John Kerry was under attack by the Swift Boat Veterans for Truth, who said the senator had inflated, even lied about, his Vietnam record, and the senator's poll numbers were beginning to slip. Like many others, Marshall wanted to fight back. "As long as reliving what we did in the late 1960s is all the rage," he wrote, "here's a thought." Then he brought up Barnes. "But [Barnes has] never really spoken openly about how he helped Bush hop in front of everyone else or other aspects of the president's abbreviated military service," he wrote. And this was a topic "about which [Barnes] is said to know a great deal." So "maybe now would be the time?"

This was not a rhetorical question. A few days later, on August 27, Marshall linked to a video clip from a June 8 John Kerry rally in Austin in which Ben Barnes said, among other things:

> I walked through the Vietnam Memorial the other day and I looked at the names of the people that died in Vietnam and I became more ashamed of myself than I have ever been because it was the worst thing that I did. . . . I helped a lot of wealthy supporters and a lot of people who had family names of importance get into the National Guard and I'm very sorry about that and I'm very ashamed and I apologize to you as voters of Texas.

Marshall was agog. He wrote that he had confirmed the clip's authenticity with James Moore—the author of *Bush's War for Reelection*, a CBS source, and Bill Burkett's Boswell. A few hours later, Marshall linked to the story Moore had written for *Salon* a month earlier on Bush and the Guard. "More soon . . . " he wrote.

And there was more. Soon. On August 28, the Knight-Ridder news service picked up the story. The next day, Marshall blogged about Barnes again. "And as for the Barnes thing," he wrote, "I think we can be pretty confident we'll be seeing something a good deal more public in the next several days."

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We can also be pretty confident, based on Marshall's blog and other reporting, that, by the end of August, Democrats were talking openly about Barnes's impending *60 Minutes* appearance. On August 30, in a piece called "The Ben Barnes Blackout," a *Salon* writer wondered why major media outlets weren't covering the Barnes story, and suggested that Barnes would have "more to say" later in the week. On September 1, Marshall again blogged about Barnes. He said the former Texas house speaker had not come forward previously because of threats made by the Bushies. "But apparently those threats haven't done the trick," Marshall wrote. Why?

> because [Barnes] has already taped a lengthy interview slated to appear in the not-too-distant future on a major national news show in which he'll describe the strings he pulled to keep Bush out of Vietnam and apparently more. (Between you and me, according to my three sources on this, Barnes told his story to Dan Rather—remember, the Texas connection—for *60 Minutes*.)

It is worth asking why Ben Barnes decided to come forward with his story now, when he had stayed silent for so many years. And a report in the September 20 *Newsweek* suggests why: The Killian forgeries primed the pump. "Rumors about the memos had circulated in the Democratic party and media circles for weeks," write Howard Fineman and Michael Isikoff. "In fact, CBS had used their existence to help persuade Barnes to talk." And Barnes talked a lot: to CBS, of course, but also to friends, and politicians, and journalists. "If documents the network was hunting for were found," *Newsweek* reports he told them, "'the election is over.'"

September: "Feel the buzz."

The final touches were put on the *60 Minutes* segment in September, and liberal media outlets continued to hype the upcoming report. For example, another *Salon* piece, published on September 2, mentioned Barnes's impending *60 Minutes* appearance. That same day, of course, was when Bush accepted his party's nomination in New York City. And that night, John Kerry held a last-minute midnight rally in Springfield, Ohio. Kerry looked ragged and tired, and he flailed about on the dais. But his message was clear. "I will not have my commitment to defend this country questioned by those who refused to serve when they could have and who misled America into Iraq," he said. He was speaking, of course, about Vice President Cheney and President Bush.

And as Marshall and others hyped the upcoming *60 Minutes* exclusive, Bill Burkett continued to play strategist for the Kerry campaign. On September 4, he spoke with Joe Lockhart. Burkett told *USA Today* that Mapes had arranged the conversation with Lockhart in exchange for the remaining forged Killian memos. Speaking to *USA Today*, a senior vice president at CBS News denied any "deal." For his part, Lockhart says Mary Mapes contacted him, and then he called Burkett. The two men spoke for several minutes. For the second time, a Kerry campaign official had contacted Bill Burkett.

On Sunday, September 5, Burkett gave the remaining forgeries to CBS's Mike Smith. The next day, Howard Wolfson showed up for work at the DNC, and Operation Fortunate Son began in earnest.

That same day, Terry McAuliffe, the DNC chairman, issued a press release summarizing "what we don't know" about Bush and the Guard. On Tuesday, September 7, Dan Rather interviewed Ben Barnes in New York. The big show, scheduled for the following evening, was coming together. (No thanks to outside document experts Linda James and Emily Will, who called Mary Mapes that day with concerns about the Killian forgeries. Will recalled to the *Washington Post* that she told Mapes, "If you air the program on Wednesday, on Thursday you're going to have hundreds of document examiners raising the same questions.")

Meanwhile, news of CBS's "scoop" had reached Washington. At 3:30 P.M., Josh Marshall posted on his blog:

> FEEL THE BUZZ. Contrary to what I had originally understood, the Ben Barnes interview is running Wednesday evening. But, I'm told by several sources that the Barnes interview is only a relatively small part of the package *60 Minutes* is running. There's other stuff that CBS has—newly discovered, or at least newly-revealed, documents that shed light on Bush's guard service or lack thereof.

And the DNC continued to issue press releases. "In response" to "breaking news reports," DNC spokesman Jano Cabrera wrote: "For months George Bush told the nation that all his military records were public. Now we know why Bush was trying so hard to withhold these records." Then Cabrera upped the ante. "It's time for President Bush to release all his records, come clean and tell the American people why he stopped flying when he was in the Air National Guard."

That evening, around 5:30 P.M., White House communications director Dan Bartlett contacted CBS. Bartlett had heard about the story *60 Minutes* was planning and, according to the *Washington Post*, asked "whether the White House could respond to the widely rumored story." CBS agreed. (It's worth noting that the White House called CBS, and not the other way around.) A few hours after Bartlett contacted CBS, Marshall again plugged the *60 Minutes* story on his website. "The big news won't be how Bush got into the Guard but how he blew off his duties once he got there," he wrote. "Again, new documents—

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stuff that is clear and straightforward and apparently puts beyond any debate or doubt that the now-President blew off the duties that he said, as recently as this year, that he fulfilled."

The assault on Bush's Guard service was threefold. There was a media component, there was the DNC component, and there was the independent advertising component. The morning of September 8, for instance, around the same time that CBS correspondent John Roberts was interviewing Dan Bartlett for *60 Minutes*, a 527 group called Texans for Truth aired its first attack ad. The ad ran in several swing states—places like Ohio, West Virginia, and Pennsylvania. Its creator was a man named Glenn W. Smith. Smith ran Tony Sanchez's unsuccessful 2002 campaign for Texas governor, and nowadays runs a group called DriveDemocracy, based in Austin. And Smith is well connected. DriveDemocracy received its initial funding from the grandaddy of all Democratic 527s, MoveOn.

It's easy to forget, but the infamous *60 Minutes* report wasn't the only major news story on Bush's Guard service that ran on September 8. If you read the *Boston Globe* that morning, you probably came across a 1,400 word "reexamination" of Bush's Guard records, which concluded, portentously, that the president "fell short" of his commitments in 1968 and 1973. A day earlier, the Associated Press published a lengthy examination into documents it had obtained through a Freedom of Information Act (FOIA) request, and concluded, "Documents that should have been written to explain gaps in President Bush's Texas Air National Guard service are missing from the military records released about his service in 1972 and 1973." On September 8 many news outlets covered the ramifications of AP's story.

In other words, the media did feel the buzz about Bush and the Guard by September 8, for a couple of reasons. One is that many reporters felt it was only fair to subject Bush's Vietnam record to microscopic scrutiny, after the Swift Boat Veterans for Truth had gotten such traction with their attacks on John Kerry's war record in August. The *Washington Post*'s E.J. Dionne summarized this view in an August 24 column: "This is also a test for the media," he wrote. ". . . [T]he media owe the country a comparable review of what Bush was doing at the same time and the same age."

Another reason is that many news organizations' FOIA requests for documents came through that week. And still another reason, and perhaps the most important one, is that the political machinery of Kerry-Edwards 2004, the Democratic National Committee, and Operation Fortunate Son was geared toward pushing the idea that Bush served dishonorably in the Guard, and has lied about his service ever since.

It is no exaggeration to say that Democrats viewed Dan Rather's *60 Minutes* segment as the *coup de grâce*. As the program's airtime approached, the DNC continued to tout the impending story. In one press release, issued just before the CBS report aired, Terry McAuliffe said, "George W. Bush's cover story on his National Guard service is rapidly unraveling." And he went on: "George W. Bush needs to answer why he regularly misled the American people about his time in the Guard, and who applied political pressure on his behalf to have his performance reviews 'sugarcoated.'" McAuliffe was quoting directly from the Killian forgeries, which by that time were available on CBS's website. The DNC issued two other releases in the run-up to the *60 Minutes* story. It aired at 8:00 P.M., and 8.1 million people were watching.

Sometime after the show aired, Mary Beth Cahill called Ben Barnes. She congratulated him on his interview. "You did a great job," she said, according to *Newsweek* magazine. "You did a brave thing." Nor was she the only prominent Democrat or Kerry campaign official who spoke with Barnes. Her former boss, Massachusetts senator Edward M. Kennedy, one of the Kerry campaign's national co-chairs, also called to congratulate the former speaker. And Democrats had every reason to be happy. The combination of Barnes's interview and the purported memos from Killian's "personal files" reinforced the idea that political influence had been used on Bush's behalf.

And that's why the DNC issued two more press releases the next day quoting from *60 Minutes*. That's why Sen. Tom Harkin said "the documentation shows that the president was not being truthful." That's why Terry McAuliffe cautioned reporters that "CBS stands by their story" on September 10, and why the DNC was readying its web movie *Fortunate Son* for release on September 14. Ben Barnes, Bill Burkett, Dan Rather, Mary Mapes, and others were all part of a political campaign—whether they liked it or not.

The only problem was that the Killian memos were phony. All the coordination, all the reliance on dubious sources, all the hype—it was all for nought. The story collapsed under the weight of six fake memos. This was not what most Democrats expected would happen. Go back and read what some were saying in the hours after the *60 Minutes* exposé first aired, and you detect in their remarks a sense of hope. A few hours after the broadcast on September 8, for example, Joshua Micah Marshall responded to what he had just watched on television. He said the memos raised more questions than *60 Minutes* had answered. "[C]learly there's quite a story to tell," he wrote. And he was right. There was a story packed in those short memos. It just wasn't the story he thought it was. ♦

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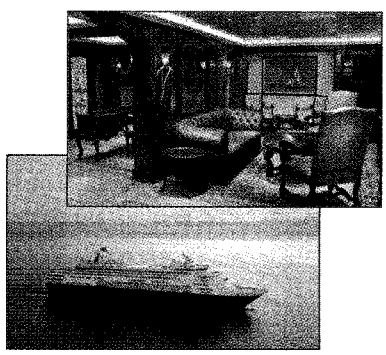

Date	Day	Ports of Call	Arrive	Depart
Feb. 6	Sunday	Port Everglades (Ft. Lauderdale), Florida	5:00 p.m.	
Feb. 7	Monday	Nassau, Bahamas	7:00 a.m.	12:00 p.m.
Feb. 8	Tuesday	At Sea		
Feb. 9	Wednesday	St. Maarten (Philipsburg), Netherlands Antilles	10:00 a.m.	11:00 p.m.
Feb. 10	Thursday	Tortola (Road Town), British Virgin Islands	7:00 a.m.	6:00 p.m.
Feb. 11	Friday	At Sea		
Feb. 12	Saturday	Half Moon Cay, Bahamas	8:00 a.m.	4:00 p.m.
Feb. 13	Sunday	Port Everglades (Ft. Lauderdale), Florida	8:00 a.m	

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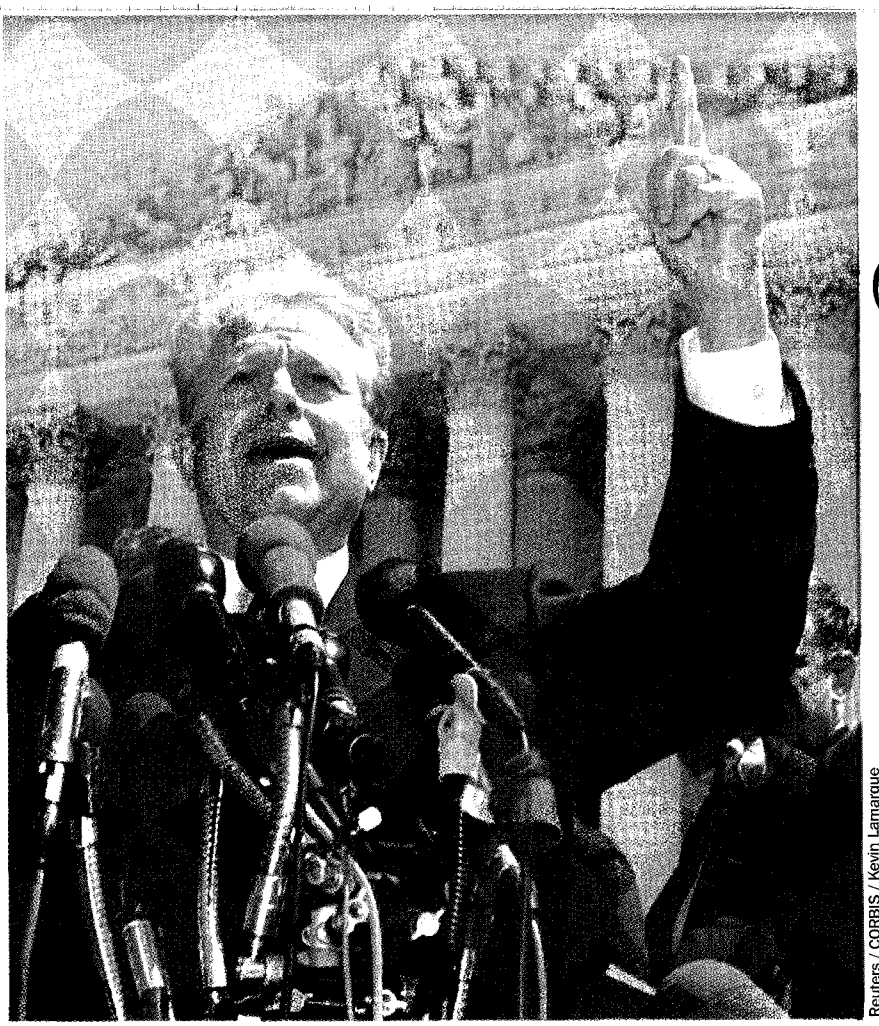
The Big Mahatma

Laurence Tribe and the problem of borrowed scholarship

By Joseph Bottum



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Suppose you were doing a little research into the history of Supreme Court nominations, and you learned from one book that Grover Cleveland "bested Benjamin Harrison by almost 100,000 votes in the election of 1888, but the vagaries of the electoral college caused him to lose the election" (p. 130).

And then, browsing through a later book on the topic, you read that Harrison is remembered for "losing the popular election in 1888 by 100,000 votes and still managing to take the Oval Office from incumbent President Grover Cleveland through the vagaries of the Electoral College" (p. 63).

Perhaps you'd think it merely a matter of curious—but not impossible—chance that both authors had used the same, memorable phrase: "vagaries of the Electoral College."

Suppose, however, more curiously, that further along in the newer book was the following description of the controversy surrounding Harry Truman's 1949 nomination of Sherman Minton to the High Court: "several Senators called on Minton to appear before the Judiciary Committee. Minton declined the 'invitation' and said that he would stand on his record as a Senator and a federal appellate judge" (p. 84).

Those ironic quotation marks around the word "invitation" might seem familiar. And, sure enough, there they are—and then some—in the earlier book, as well: "Republican Senators Homer Ferguson of Michigan and Forrest C. Donnell of Missouri requested that Judge Minton appear before the Senate Judiciary Committee to respond to questions. He declined the 'invitation,' noting that he would stand on his record as a Judge and Senator" (p. 231).

By now, of course, your radar would be fully active, and you'd be scouring both books for telltale, otherwise inexplicable parallels. Like the phrase "Holmes mold," which appears in the later book as: "The chairman of the Judiciary Committee, Senator George Norris, immediately made it clear to President Hoover that he and his fellow committee members, mostly Democrats and Progressive Republicans, would insist upon a liberal jurist in the Holmes mold" (p. 80).

In the earlier book, the same sentence can be found almost verbatim: "But almost at once the Chairman of the Senate's Judiciary Committee, George W. Norris, made it plain to the President that he and his fellow committeemen, largely Democrats and Progressive Republicans, would insist

Laurence H. Tribe's God Save This Honorable Court (1985), p. 83: Taft publicly pronounced Pitney to be a "weak member" of the Court to whom he could "not assign cases."

Henry J. Abraham's Justices and Presidents (1974), p. 164: Taft publicly pronounced Pitney to be a "weak member" of the Court to whom he could "not assign cases."

Joseph Bottum is Books & Arts editor of The Weekly Standard.

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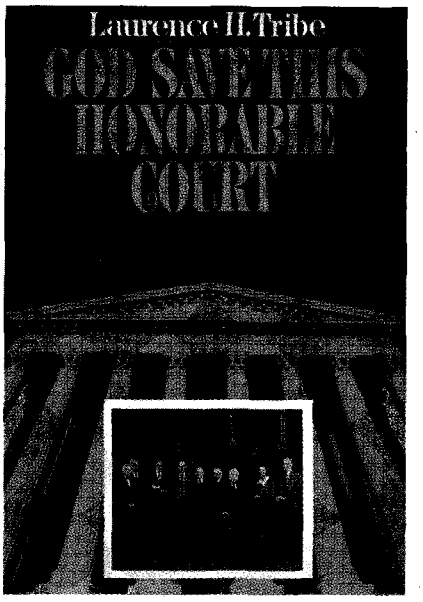


on a judicial liberal in the Holmes mold" (p. 191).

It would no longer seem just a coincidence that both books refer to Truman's "buddies" benefitting from a "crony appointment" (p. 224 in the older book and p. 68 in the newer)—followed by "Truman . . . liked them; he liked their politics" in one, and "Harry liked his friends, and he liked their politics" in the other (p. 224 and p. 69).

Or that the earlier book recounts how "Others were rather more specific" when they "urged Hoover to nominate Benjamin Nathan Cardozo, Chief Judge of the New York Court of Appeals"—since, after all, the later book recounts much the same thing, in much the same language: "Others were more specific" when they "urged Hoover to nominate Chief Judge Benjamin Cardozo of the New York Court of Appeals" in the newer (p. 191 and pp. 80-81).

And what if, finally, you were to discover an *identical* nineteen-word passage in both books: "Taft publicly pronounced Pitney to be a 'weak member' of the Court to whom he could 'not assign cases'"? (p. 164 and p. 83). The conclusion would then seem unavoidable: The later book is doing wholesale borrowing from the earlier.

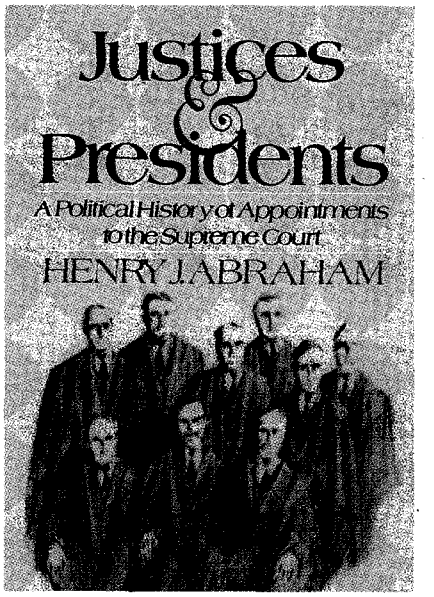
Or, to make things rather more specific: In 1985, Harvard University's Laurence H. Tribe, the most famous and widely cited constitutional law professor in the United States, signed his name to a book called *God Save This Honorable Court* that now appears—how shall we say it?—perhaps "uncomfortably reliant" on a 1974 book called *Justices and Presidents* by the University of Virginia's Henry J. Abraham.

Poor Harvard seems to be going through a spate of such incidents. A national news cycle was generated in 2002 when THE WEEKLY STANDARD broke the story that Doris Kearns Goodwin—a member of Harvard's Board of Overseers and a former professor of government at the school—had done some serious copying for her 1987 book, *The Fitzgeralds and the Kennedys*, and then bought off one of the authors from whom she lifted her material.

Next, in a more complicated case, Harvard law school's Alan Dershowitz was accused of overusing a single secondary source for his 2003 book, *The Case for Israel*.

Tribe, p. 80: The chairman of the Judiciary Committee, Senator George Norris, immediately made it clear to President Hoover that he and his fellow committee members, mostly Democrats and Progressive Republicans, would insist upon a liberal jurist in the Holmes mold.

Abraham, p. 191: But almost at once the Chairman of the Senate's Judiciary Committee, George W. Norris, made it plain to the President that he and his fellow committeemen, largely Democrats and Progressive Republicans, would insist on a judicial liberal in the Holmes mold.



Finally, just a few weeks ago, on September 3, Charles J. Ogletree, Harvard's Jesse Climenko Professor of Law, admitted on the university's website that the assistants who'd actually prepared his new *All Deliberate Speed: Reflections on the First Half-Century of Brown v. Board of Education* lifted six consecutive paragraphs from a 2001 book by Yale's Jack M. Balkin.

Oddly enough, Laurence Tribe plays a role in two of these stories. (And peripherally touches the third, if one counts the thanks he offers Dershowitz, his "friend and colleague," in the preface to *God Save This Honorable Court*.)

When the Goodwin incident prompted Harvard's undergraduate newspaper, the *Crimson*, to call for her scalp—"Goodwin's plagiarism of sentences, nearly verbatim, from source materials is inexcusable. . . . [S]he should recognize that her action is unbecoming an Overseer and resign her post immediately"—Tribe wrote a letter in the next issue expressing "great sadness" at how "mindlessly" the students' editorial had attacked her.

Goodwin "had not the slightest intention to deceive, to claim originality for thoughts that were unoriginal, or to appropriate another's deathless prose in hopes that she might be credited with a literary gift that belongs in truth to someone else," Tribe insisted. Oh, he

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Tribe, p. 69: But Harry liked his friends, and he liked their politics.

Abraham, p. 224: Truman...liked them; he liked their politics.

admitted, she had "erred in following her own paraphrased handwritten notes without checking back in every last one of the 300 or so books she cited." But Goodwin's work was "documented with something like 3,500 footnotes," which according to Tribe proved both her commitment to scholarship and her "personal integrity."

Then, this year, Tribe initially appeared willing to excuse Charles Ogletree's plagiarism altogether, telling the *Boston Globe*: "It clearly represents the fact that because he so often says yes to the many people all over the country who ask for his help on all kinds of things, he has extended himself even farther than someone with all that energy can safely do."

Challenged about this apparent absolution, however, he later offered a rather different analysis. In an email posted on a blog about legal topics run by Lawrence R. Velvel, dean of the Massachusetts School of Law, Tribe wrote, "What I told the *Boston Globe* about the way in which [Ogletree] has overextended himself was not intended to be a complete explanation or justification." And there is more to say, he allowed: "The larger problem"—the "problem of writers, political office-seekers, judges and other high government officials passing off the work of others as their own"—is "a phenomenon of some significance" and worth exploring.

That seemed a little rich for one reader of THE WEEKLY STANDARD, a law professor who suggested we take a look at Tribe's own *God Save This Honorable Court* if we wanted to explore the "problem of writers . . . passing off the work of others as their own."

And so we did, and the result is . . . well, what? It's awkward to name what Laurence Tribe has done in *God Save This Honorable Court*. In his letter to the *Crimson* about Doris Kearns Goodwin, Tribe proudly called himself a "scholar who values his own integrity and reputation for meticulous attribution as much as anyone could."

But even Goodwin's discredited book, by Tribe's own account, contained "something like 3,500 footnotes" citing "300 or so" other works; *God Save This Honorable Court*, by unflattering contrast, contains no footnotes at all—nor any other sort of "meticulous attribution." Instead, at the end of *God Save This Honorable Court*, we find a two-page "Mini-Guide to the Background Literature," which lists Henry Abraham's *Justices and Presidents* as merely the twelfth of fifteen books (including two of Tribe's own previous works) that "an interested reader might wish to consult."

And against even this tiny hint of Tribe's use—the only appearance of Abraham in the book—one must set Tribe's preface, which explains the lack of footnotes by claiming: "much of what this book contains represents the culmination of more years of research and reflection about the Supreme Court and its role than I care to confess. Thus I cannot hope to trace here all the roots of the ideas that appear in these chapters—or to allocate credit or blame among the many who share indirect responsibility for the thoughts I have expressed."

God Save This Honorable Court appeared in 1985 from Random House, selling well and receiving gen-

Tribe, pp. 64-65: Although he rose to the Presidency in 1908 as Teddy Roosevelt's handpicked protégé, Taft was far more conservative and much less decisive than his political mentor....Taft made a record six Supreme Court appointments in his single term in office. He put five new men on the Court and elevated Justice White to the position of Chief Justice. Although he was not as dogmatic in his conservatism as the late nineteenth-century Presidents, Taft was determined to avoid nominees of the liberal stamp of Learned Hand, Louis Brandeis, or Benjamin Cardozo. Taft regarded these potential candidates as nothing less than "destroyers of the Constitution."

Abraham, pp. 154-155: Although he was elected to and embarked upon the Presidency as Roosevelt's handpicked protégé, William Howard Taft's conception of the office differed dramatically from his predecessor's in style as well as substance....Taft was far more conservative than T.R., cautious and at home with the G.O.P.'s conservative leadership....In his single term Taft appointed six Justices to the Court, including one Chief Justice—at the time more than any President since George Washington....[H]e wanted no "liberals" of the stamp of Learned Hand, Louis Brandeis, or Benjamin Cardozo, potential candidates whom he regarded as "destroyers of the Constitution."

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Tribe, p. 83: While Senator Conkling mulled over the prospect, both nominee and nominator received a thorough roasting in the press. Amid widespread recognition that Conkling was unfit for the office, the Senate adhered to its tradition of always affirming its own and confirmed the nomination 39 to 12. President Arthur and the nation were spared a potentially disastrous appointment when Conkling capitulated to collective wisdom—and his better judgment—and declined the honor five days after his confirmation.

Abraham, pp. 129-130: [Conkling] pondered the matter for several days, during which time the press had a field day in lambasting nominator as well as nominee. True to its tradition of never rejecting one of its own, the Senate confirmed Conkling with a comfortable 39:12 margin on March 2, 1882. Yet to audible sighs of relief, Conkling formally declined five days later, after all....In thus paying homage to his political spoilsman and teacher, Arthur had only narrowly been spared a potentially disastrous appointment.

erally laudatory notices—and when the *Wall Street Journal* ran a less-praising review, Tribe took issue in a letter to the editor. A reviewer in the *Los Angeles Times*, Dennis J. Mahoney (author of this year's *Politics and Progress*, an interesting history of the academic discipline of political science in America), seemed to hint at the reliance on Abraham's book, "from which Tribe apparently borrowed most of his examples," but at the time, no one took particular notice.

No one, that is, but Henry J. Abraham himself. Abraham's *Justices and Presidents: A Political History of Appointments to the Supreme Court* first appeared from Oxford University Press in 1974. A second edition followed in 1985, a third in 1992, and Rowman & Littlefield brought out a fourth edition in 1999, retitled *Justices, Presidents, and Senators*.

(In his "Mini-Guide," Tribe refers to Abraham's second edition, published in 1985, the same year as Tribe's book. Did Tribe have the second edition while he was actually writing *God Save This Honorable Court*? His preface is dated January 1985, which makes it at least questionable. Thus, all references here are to Abraham's 1974 first edition instead. For those with later editions, Abraham's discussions appear roughly ten pages later in the second edition and about forty pages earlier in the oversized paperback of Rowman & Littlefield's "new and revised" edition.)

Calling Henry Abraham a venerable historian of the courts hardly does justice to his stature. Now retired as an emeritus professor of government at the University of Virginia, the eighty-three-year-old scholar is the author of such standard works as 1962's *The Judicial Process: An Introductory Analysis of the Courts of the United States, England, and France*, 1965's *The Judiciary: The Supreme Court in the Governmental Process*, and 1967's *Freedom and the Court: Civil Rights and Liberties in the United States*.

Gary McDowell—a professor of political science at the University of Richmond who was Abraham's research assistant from 1977 to 1979—is thanked along for his help with *Justices and Presidents* in the 1985 edition. But when I asked him about the phenomenon of professors like Charles Ogletree pushing their assistants to write their manuscripts, he pointed to the hundreds of endnotes in *Justices and Presidents* and said that research assistants "never wrote passages" for the author: "One of the things that distinguishes Henry Abraham is that he's always done his own work."

Colgate's Stanley Brubaker, another former assistant thanked in the preface, laughs and says, "There's not a word in that book that didn't come from Henry's pen."

Abraham himself understands the lure. "The temptation of busy people, big deals, to turn the material over to assistants is very strong," he told me when we spoke last week. But the "annoying" practice must be stopped, he said—partly because the assistants lack the judgment that the professor is supposed to have, but mostly because it's wrong: unscholarly and unprofessional.

Discussing the dependence of *God Save This Honorable Court* on *Justices and Presidents*, Abraham is less than forgiving. "I was aware of what Tribe was doing when I first read his book," he said. "But I chose not to do anything at the time. I've never confronted him—and I was wrong in not following it up. I should have done something about it." Tribe's work probably derived from "a combination of being lazy and making a little money. I'm sure his book sold better than mine," Abraham added. But "he's a big mahatma and thinks he can get away with this sort of thing."

Indeed, the now over sixty-year-old Tribe is *the* big mahatma of American law as well as the great legal champion of the Democratic party. He's argued thirty-six cases before the Supreme Court, an astonishing number, and they include such landmark cases as the 2000 *Bush* v. *Gore*. He just represented the losing side before the Florida Supreme Court in John Ker-

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ry's effort to keep Ralph Nader off the ballot. He's produced the bestselling textbook *American Constitutional Law*, now in its third edition. He's written such books as the 1985 *Constitutional Choices* and the 1991 *Abortion: The Clash of Absolutes*. In addition to holding his chair at the law school, Tribe was recently named one of Harvard's rare "University Professors," replacing Archibald Cox, who died this spring.

From providing the talking points with which Senator Edward Kennedy went after William Rehnquist when he was nominated to be chief justice in 1986 to being named counsel for the team on call should John Kerry need lawyers to represent him during a recount this year, Tribe has clearly been a dominant figure for some while.

He was the big mahatma back in 1985, for that matter. The preface to *God Save This Honorable Court* thanks the powerful Democratic campaign specialist Bob Shrum, "my good friend," for suggesting that the book be written, and praises the assistance given by future Democratic party legal talents such as Ronald Klain. (Interestingly, Klain, who would go on to work in the White House as Vice President Gore's chief of staff, was then only a first-year student at Harvard law.)

So why would Tribe bother producing such a book—and introduce his young assistants to this kind of academic practice?

Part of the answer was the public purpose the book served. Thoughtful observers in the early 1980s could see what Tribe labeled the "greying of the Court," as the sitting members grew old together and potential replacements could be caught in battles between Republican presidents and Democratic senators.

In 2001 testimony before the Senate Judiciary Committee, Tribe himself described the 1985 *God Save This Honorable Court* as "defending an active role for the Senate in the appointment of Supreme Court Justices" and setting in place the argument that burst into public view two years later: "it wasn't until the 1987 resignation of Lewis Powell and the confirmation battle later that year over Robert Bork that the concrete stakes in this otherwise abstract controversy came to life for the great majority of the American public."

Tribe, p. 68: Truman was a loyal politician, and in the course of forming his own administration he made many a crony appointment, including four to the Supreme Court. Two of his appointees were his former Senate buddies,...two were members of his executive team and close confidants.

Abraham, p. 224: Unfortunately, he was also given to extravagant notions of loyalty that prompted him to make many a "crony" appointment—not excluding those he was enabled to make to the Supreme Court. There were four, and all were old buddies.

This judgment about the book seems nearly universal. "Tribe's arguments provided the intellectual blueprint for the anti-Bork forces," the *New York Times* explained in 1987. "And, as the hearings approached, he played the role of the nominee in mock question-and-answer sessions held in the living room of Senator Joseph R. Biden Jr., Democrat of Delaware, chairman of the Senate Judiciary Committee."

"Klain spent most of his time with Tribe working on Tribe's book *God Save This Honorable Court*," the *Legal Times* added in 1993. "The book, which was published in 1985, became a kind of intellectual road map for Democrats as they worked to defeat Robert Bork's Supreme Court nomination two years later. Many of Klain's friends and former colleagues say that he wrote large sections of the book, a claim that Tribe disputes."

But there seems more to the production of Tribe's book than its public purpose. We enter here into what the novelist (and sometime WEEKLY STANDARD contributor) Thomas Mallon calls the "peculiar psychology" of famous people who want also to be authors.

Mallon has written, in addition to his novels, the 1989 *Stolen Words: Forays into the Origins and Ravages of Plagiarism*, declared "the definitive book on the subject" by the *New York Times*. And so I telephoned him to ask what he thought of the kind of systematic paraphrasing that *God Save This Honorable Court* uses.

But he seemed interestingly unwilling to subsume the practice entirely under the genus of plagiarism. Of Tribe's particular case, Mallon rightly said he didn't know the details. But even of the general form, he thought a distinction might need to be made in some cases. Still, Mallon concluded, "authors do not have a license to paraphrase forever." And pushed to decide, he offered this formulation as a good rule: "Constant paraphrasing without at least semi-regular attribution constitutes a form of plagiarism."

The Modern Language Association's *Guidelines for Documentation* proves a little sterner, condemning the practice as "plagiaphrasing" and likening it to the dishonesty of plagiarism: "Plagiarism (the *unacknowledged* borrowing of words or ideas) is a serious violation of academic honesty. So is 'plagiaphrasing': rewording a quote without putting the idea in your 'voice.'"

Mallon's gentler definition might conceivably let off Doris Kearns Goodwin. But not Tribe, whose noteless text provides nothing resembling "semi-regular attribution." So perhaps the MLA's ugly coinage "plagiaphrase" is the best term to describe what Tribe

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and his assistants did with *God Save This Honorable Court*.

The historical sections of the book typically consist of a long passage from Abraham crunched down by rephrasing and the elimination of detail—as one might expect when Abraham's 298 pages of material are made to provide the facts around which Tribe builds his own thesis in 143 pages of text. The repetition of "Taft publicly pronounced Pitney to be a 'weak member' of the Court to whom he could 'not assign cases'" (Tribe, p. 83; Abraham, p. 164) is straightforward copying. But more often, the reader will find the kind of plagiaphrasing that the MLA condemns.

So, for example, on page 64, Tribe writes: "Although he rose to the Presidency in 1908 as Teddy Roosevelt's handpicked protégé, Taft was far more conservative and much less decisive than his political mentor."

Abraham rendered it as: "Although he was elected to and embarked upon the Presidency as Roosevelt's handpicked protégé, William Howard Taft's conception of the office differed dramatically from his predecessor's in style as well as substance"—and then, after two hundred words of detail, adds: "Taft was far more conservative than T.R., cautious and at home with the G.O.P.'s conservative leadership" (pp. 154-155).

The repetition of "handpicked protégé" and "far more conservative" make the source clear. Tribe has simply eliminated the intervening detail and lightly rephrased (improving it, in fact, by correcting Abraham's dangling modifier).

In the next paragraph, Tribe continues: "Taft made a record six Supreme Court appointments in his single term in office. He put five new men on the Court and elevated Justice White to the position of Chief Justice. Although he was not as dogmatic in his conservatism as the late nineteenth-century Presidents, Taft was determined to avoid nominees of the liberal stamp of Learned Hand, Louis Brandeis, or Benjamin Cardozo. Taft regarded these potential candidates as nothing less than 'destroyers of the Constitution'" (p. 65).

Abraham continues in his own next paragraph, "In his single term Taft appointed six Justices to the Court, including one Chief Justice—at the time more than any President since George Washington." And then, after perhaps seventy-five words of further detail, he concludes that Taft "wanted no 'liberals' of the stamp of Learned Hand, Louis Brandeis, or Benjamin Cardozo, potential candidates whom he regarded as 'destroyers of the Constitution'" (p. 155).

The reliance rolls and rolls along. Abraham has it that Caleb Cushing was "unquestionably highly qualified and possessed of a superb mind" (p. 121). Tribe inverts the clauses to say that Cushing was "possessed of a fine mind and undoubtedly highly qualified" (p. 88).

Abraham writes, "Hoover continued to demur. . . . Now, however, the powerful Chairman of the Senate Foreign Relations Committee, Republican William E. Borah of Idaho, whose support Hoover needed on other fronts, got into the act" (pp. 191-192). Tribe renders it: "When Hoover demurred, the Chairman of the Foreign Relations Committee, Senator William Borah—whose support Hoover needed on other matters—paid a visit to the White House" (p. 81).

One of the best places to spot this kind of systematic cribbing is in quotations. A perfect match in ellipses and stripping almost always means the author hasn't gone to look at the original source but is merely copying.

Thus, Tribe tells us that "One periodical characterized [Tom] Clark as a 'second-rate political hack who has known what backs to slap and when,' and sarcastically concluded that it was appropriate that 'the least able of Attorneys General of the United States should, as a result of raw political favoritism, become the least able of the members of the Supreme Court'" (p. 83).

Abraham identified the author and magazine—Harold Ickes in the *New Republic*—and says the article contended that "Truman was under no obligation whatsoever to this 'second-rate political hack who has known what backs to slap and when'; concluding that 'perhaps it was in keeping that the least able of Attorneys General of the United States should, as a result of raw political favoritism, become the least able of the members of the Supreme Court'" (p. 229).

Similarly, the repetition of mistakes in quotations is good proof of reliance. Abraham notes, "In Mr. Justice Cardozo's words: 'Marshall gave to the constitution of the United States the impress of his own mind'" (p. 75), while Tribe says, "As Justice Benjamin Cardozo wrote more than a century later, 'Marshall gave to the Constitution of the United States the impress of his own mind'" (p. 56).

But Abraham had it slightly wrong. In his 1921 *Nature of the Judicial Process*, Cardozo wrote, "*He* gave to the constitution the impress of his own mind." And once Abraham has mistakenly replaced the pronoun, Tribe followed along.

Occasionally, Tribe's plagiaphrasing leads him into difficulties. On page 83 in *God Save This Honorable Court*, he writes, "President Chester Arthur pioneered the merit system in national government appointments and authored the Civil Service Reform Act of 1883. But he had a relapse in 1882 and nominated his mentor and former boss, arch political spoilsman Roscoe Conkling, to the Court."

On pages 128 and 129 of *Justices and Presidents*, Abraham notes, "In 1881 on Garfield's death, Chester A. Arthur of New York came to the Presidency with almost everyone predicting doom and failure: his selection as Vice President had been steeped in political hacksmanship and spoilsmanship, nurtured by the nether Roscoe Conkling wing of New York's Republican party."

Abraham adds a long sentence of examples of Arthur's participation in corrupt politics, then continues, "Yet in what was one of the most dramatic character reversals in the country's history, President Arthur not only turned

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his back on his spoilsmen-cronies but authored the great Pendleton Civil Service Reform Act of 1883." After nearly a page of discussion about Arthur's good behavior as president, *Justices and Presidents* concludes, "But to the consternation of most observers, Arthur had a 'relapse' [in 1882] and offered the spot to his one-time political mentor and boss, Senator Roscoe Conkling."

Without Abraham's examples of bad behavior before and good behavior after, Tribe's noun "relapse" doesn't make much sense—unless you realize that it's actually Abraham's word and Tribe merely forgot to change it.

Meanwhile, Abraham claims that under Cleveland and Harrison the Supreme Court became "a veritable bastion of economic laissez-faire" (p. 133), and Tribe has the Court become "the last bastion of laissez-faire capitalism" (p. 64).

Abraham explains that Harrison "was content to let the Republican party hierarchy dominate the affairs of state during his four years in office" as "an economic conservative" (p. 137), while Tribe thinks Harrison was "devoted to large business interests and willing to allow the party hierarchy to run his administration" (p. 63).

Abraham: "Before he was finally confirmed six weeks later by a vote of 46-9, Bradley came under heavy fire from Eastern 'hard money' interests who quite correctly regarded him as dedicated to a 'soft money' economic philosophy" (p. 119). Tribe: "Grant nominee Joseph Bradley's dedication to 'soft money' or greenbacks came under fire from Eastern 'hard currency' business interests before Bradley was confirmed in 1870" (p. 89).

Abraham: "Andrew Jackson's Democratic supporters in the Senate were not about to award the Supreme Court plum to a Clay Whig, and by a vote of 23:17 'postponed' the nomination in February 1[8]29, thus consigning it to oblivion" (p. 85). Tribe: "Crittenden's nomination, despite his alumnus status, was postponed—and thereby consigned to oblivion—in February of 1829, a few weeks before Andrew Jackson's inauguration" (p. 86).

Abraham: Cleveland was an "economic conservative of such intensity that Wilson had cause, if only half jokingly, to regard himself as the first President of the Democratic party since 1860" (p. 130). Tribe: Cleveland "was such a dogmatic economic conservative that President Wilson regarded himself as the first real Democrat to occupy the White House since 1860" (p. 63).

The examples go on and on, too numerous to count. Laurence Tribe is in some ways a better writer than Henry J. Abraham. *God Save This Honorable Court* snaps along as popular prose in a way that *Justices and Presidents* doesn't—which is why the mainstream Random House published Tribe and the scholarly arm of Oxford University Press published Abraham. But how exactly does that give the popularizing Tribe and his assistants the right to plunder a scholar like Abraham?

In fact, it's worse than the typical example of a popularizing author's reliance on other people's scholarship, for Laurence Tribe is supposed to be a scholar himself. A phone call to Tribe's Harvard office has not yet been returned. But his credentials are well known. He's the Tyler Professor of Constitutional Law and a University Professor at Harvard. If these aren't scholars' posts, what are? He's written over a hundred books and articles, according to a blurb on the Harvard website, and "helped draft the Constitutions for South Africa, Russia, the Czech Republic, and the Marshall Islands." His *American Constitutional Law* is "the legal text most frequently cited in the second half of the 20th century," Harvard declares—and quotes the *Northwestern Law Review*, which gushed: "Never before in American history has an individual simultaneously achieved Tribe's preeminence both as a practitioner and as a scholar of constitutional law."

In other words, he didn't have to do this. He is a self-described "scholar who values his own integrity and reputation for meticulous attribution as much as anyone could." But the historians Stephen Ambrose and Doris Kearns Goodwin did much the same thing and were pilloried mercilessly.

So what shall we say of Laurence H. Tribe when *he* does it—without the footnotes that he so condescendingly told the Harvard undergraduates exonerated Goodwin? If she deserves excuse because she "had not the slightest intention to deceive, to claim originality for thoughts that were unoriginal, or to appropriate another's deathless prose in hopes that she might be credited with a literary gift that belongs in truth to someone else," what excuse is deserved by Professor Tribe?

Perhaps the explanation for the whole thing is simply vanity, Tom Mallon's "peculiar psychology" by which the famous need constant reaffirmation of their fame. Or perhaps it's merely what Henry J. Abraham supposes: "He's a big mahatma and thinks he can get away with this sort of thing." ♦

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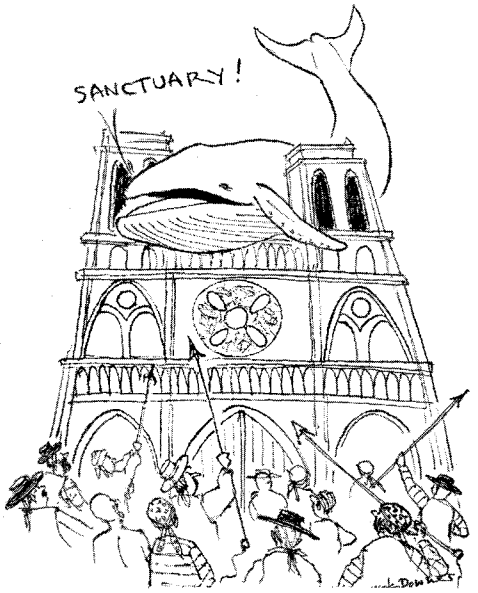

The Humpback of Notre Dame

Books in Brief

Catch a Fish, Throw a Ball, Fly a Kite: 21 Timeless Skills Every Child Should Know (and Any Parent Can Teach!) **by Jeffrey Lee (Three Rivers, 275 pp., $12.95).** A few years back, Seattle doctor Jeffrey Lee noticed the parents and children in his family practice were becoming increasingly disconnected. With everything from television shows to restaurants being divided into "children" and "adult" categories, families seemed to be spending less and less time together. The kite stayed in the garage, and the yo-yo stayed at Toys R Us. No one skipped stones.

So he made a list of twenty-one skills that he thought would have lasting value. "Stars will always be there," he says, "and one day the kids might be looking up at the stars and remember, 'Hey, I know that constellation. Dad told me a Greek myth about it.'"

The list turned into *Catch a Fish, Throw a Ball, Fly a Kite*, a compendium of pastimes such as juggling, gardening, and making apple pie. Each chapter opens with an anecdote, usually about Lee's learning the skill himself or teaching it to his daughters, and closes with riddles and trivia related to the subject. In between, beginner-friendly advice covers when to start teaching the skill, what you need before doing so, detailed illustrations, and tips on technique, troubleshooting, and safety.

For those parents who already know how to do everything in the book, it's still worth a read; I learned three new ways to teach bike riding, and the method for building sand castles is ingenious. Plus, each skill costs much less to learn than, say, *Spider Man 2* for Xbox.

—*Susie Currie*

The Fourth Power: A Grand Strategy for the United States in the Twenty-First Century **by Gary Hart (Oxford University Press, 187 pp., $22).** Former senator Gary Hart has become a foreign-policy guru, writing thirteen books—including the latest, *The Fourth Power*, in which he seeks to formulate a post-Cold War national strategy for the United States. From 1946 to 1991, the United States had a strategy: containment of communism, as elaborated by diplomat George Kennan. Containment, Hart says, was "a kind of central organizing principle around which political and military policies could be shaped, resources mustered, and the public engaged."

With the collapse of communism, however, the United States "found itself triumphant but strategically adrift"—hence the need for a new "grand strategy." Hart is alarmed that the national strategy that seems to be emerging to replace containment is the war on terror and concomitant empire-building. Echoing Pat Buchanan, Hart says that an imperial project is incompatible with America's true character as a republic.

For Hart, America's grand strategy should entail the application of its power to realize certain national purposes. America has three traditional sources of power: political, economic, and military. It also has a "fourth power": the appeal of its principles and ideals. This considerable power, Hart says, should be harnessed to achieve three "large purposes": security, opportunity, and the promotion of liberal democracy throughout the globe. The bulk of Hart's book explains how power is to be used to attain these ends. Hart's book is, at times, turgid and tedious. Still, it is a worthy contribution to foreign policy debate and warrants attention.

—*Graeme Voyer*

Bushworld: Enter at Your Own Risk **by Maureen Dowd (Putnam, 288 pp., $25.95).** It wasn't so very long ago that conservatives passed around Maureen Dowd's columns like so many tiny samizdat, savoring the occasionally witty and sharp truths she dared to write in the party newspaper. But those Clinton days are gone, and with the publication of Dowd's *Bushworld*, even the most smitten of conservative readers can see that the unhealthy dependency is finally over. Christopher Hitchens has become the lefty that righties hate to love, while Dowd has written her way into forgettableness.

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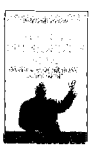
In truth, this is where she always belonged—readers just didn't notice because in the superficial Clinton era, frothy observations fit their target well. Now, Dowd's dated pop-culture riffs about an evil Dick Cheney being Darth Vader, fictionalizations about a childish George W. Bush drinking from a Juicy Juice box, and cheesy alliterations about whack-Iraq co-conspirator Paul Wolfowitz seem to miss their mark. Never one for scratching below the surface, Dowd no longer seem cleverly catty but mewlingly repetitive: She's not saying anything Democrat talking heads didn't say on television the night before.

Even though she made the best-seller list, Dowd's decision to compile her columns allows readers to count up how often she repeats herself. Cheney-as-corporate-evildoer analogies, for instance, come up four times in seven months. Comparisons to the movie *Star Wars* come off the shelf as readily for members of the Bush team as they do for Saudi architecture. The one surprise in *Bushworld* is Dowd's affection for George Bush Sr.

In the book's opening paragraph, she compliments a satirical but intimate note he offered her in 2001. Interesting that ever since, she has peppered her columns with hopeful "father would disapprove" assumptions about the younger Bush's foreign policy. Because of the revelation—one of several disclosures Dowd has dropped about notes from powerful older men—she comes off as an unhappy, wishful member of the Bush family, playing dutiful daughter to W's prodigal son.

—Melana Zyla Vickers



***All The President's Spin: George W. Bush, the Media, and the Truth* by Ben Fritz, Bryan Keefer, and Brendan Nyhan (Touchstone, 352 pp., $14).** Most of the unremarkable anti-Bush screeds littering bookstore shelves don't merit much attention, but this book is slightly different. Its authors run the popular political debunking website *spinsanity.com*, a site that garners praise even from some conservatives. So unsuspecting readers might confuse this tome for a serious piece of extended political journalism, a legitimate attempt to offer a point-by-point rebuttal to the president's supposed "lies" on a host of issues.

It's not. Some elements of the work are logically inconsistent. For example, the authors never quite explain how an administration the authors portray as more cynically PR-oriented than Bill Clinton's could be so much worse than Clinton's at communicating its message to the public. Or how a president as adept as they say George W. Bush is at manipulating the media and public opinion could still be so nearly tied with his rival in the 2004 election.

At other times one feels sorry for the authors. This book must have gone to print just before the Senate Intelligence Committee report appeared debunking many of the efforts to torpedo Bush's case for the war in Iraq. Their reverence for Ambassador Joe Wilson seems quaint in light of what we now know about his relationship with the truth. The authors' reliance on a Seymour Hersh article to flesh out their account of Wilson's Niger adventure is icing on the yellowcake.

Whatever the virtues of their website (and it does seem to be relatively bipartisan), this trio has fumbled badly in their effort to craft a serious book. Perhaps they win points for at least including a few pages at the very end about John Kerry's spin-machine (although they manage to blame Kerry's deceptions on Bush).

But at the end of the day, don't be fooled by the kind words from conservatives and libertarians on the inside cover: The website's all right, but the book is merely another typical anti-Bush rant.

—Joseph C. Sternberg

***Ancestral Shadows: An Anthology of Ghostly Tales* by Russell Kirk (Eerdmans, 424 pp., $25).** It may come as a surprise, even to some conservatives, to learn, or recall, that Russell Kirk penned ghostly tales. But it shouldn't. There may be no one more suited for the task than the author of *The Conservative Mind*.

Who better to serve as a guide to ancient manor houses, country backwaters, and forgotten side streets, and what might lurk in their darkened corners? Who better to cast aside dreary materialist dogmas and peer through the keyhole to eternity than a thinker who considered his a "Gothic mind" and who "did not love cold harmony and perfect regularity of organization" but "sought . . . variety, mystery, tradition, the venerable, the awful"?

This collection returns nineteen of his stories to print, flanked by theologian Vigen Guroian's introduction and Kirk's own essay, "A Cautionary Note on the Ghostly Tale."

Kirk believed there to be places where the distance between the seen and the unseen narrows to a sliver and something spectral, hellish, or heavenly might be glimpsed. And his uncanny stories, some said to be based remotely on true accounts, are set in such preternatural places. "The tales in this volume have retributive ghosts, malign magicians, blind angels, beneficent phantoms, conjuring witches, demonic possession, creatures of the twilight, divided selves," Kirk wrote. "I present them to you unabashed. They may impart some arcane truths about good and evil; as Chesterton put it, all life is an allegory, and we can understand it only in parable."

In the tradition of such masters of the ghost story as M.R. James and Joseph Sheridan Le Fanu, Kirk's tales are well-crafted, delightfully eerie, and creepy good fun. What more do you want from a book?

—R. Andrew Newman

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"Conflicting opinion polls are adding confusion to the presidential race. 'Opinions are shifting as people think about something one day and think about something different the next,' said Andrew Kohut, director of the Pew Research Center."
—Chicago Tribune, Sept. 18

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Date: SEPTEMBER 27, 2004
Subject: RESULTS FROM THE LATEST SURVEY OF COMPLETELY UNDECIDED VOTERS
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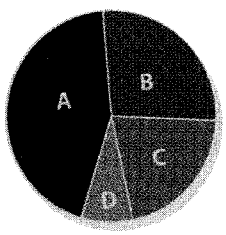
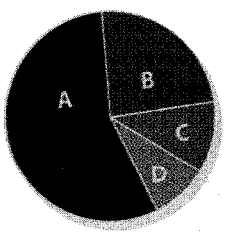


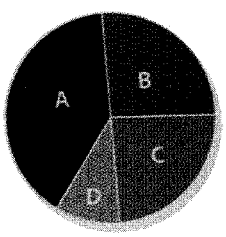
What are you thinking about right now?

A. 44%: I would never eat bugs, even if you paid me $5,000.
B. 27%: Lynette is lying about me and Billy last night and she is a complete bitch.
C. 21%: It's kind of quiet but it's like there's this slight ringing in my head, but I don't know if that's my ears or, if I didn't have any ears, if that would still be in my head.
D. 8%: If you could have really small elephants as pets, I would totally have one.



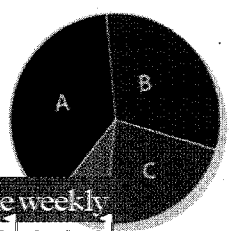
Do you intend to vote this November?

A. 56%: Umm, yes? Actually, no.
B. 24%: "Intend to vote." Is that college-boy talk? Forget it—I'm voting for Bush.
C. 11%: November backwards is Rebmevon, which kind of sounds like Revlon.
D. 9%: I usually vote in the spring.



If you had to vote today, which candidate would you pick?

A. 40%: George W. Bush. Actually, make that John Kerry. These pants look terrible on me. My thumb hurts.
B. 26%: John F. Kerry, or whoever's president now. I like that one.
C. 24%: Can you read their names again, a little more slowly?
D. 10%: Whichever one was in that movie, or maybe that was *Diff'rent Strokes*.



What issue will be most important to you in deciding how to vote?

A. 38%: Crime. It's why I'm not s'posed to vote no more.
B. 31%: Flip-flopping. I don't like people who can't make up their mind.
C. 22%: The death tax. But only for serious stuff like murder.
D. 9%: The War Ontario.

the weekly Standard
OCTOBER 4, 2004

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Bill Clinton famously proclaimed that "the era of big government is over." He was wrong: it just moved to the suburbs. State and local governments now dwarf the national government. Fully 86 percent of civilian government employees work for state and local entities. That translates into 46 million Americans who either work for local governments or depend on someone who does.

By long-standing tradition, Americans prefer their government to be close to home, where ostensibly we can control it. We've got half our wish: most government is local, but it is out of control. Local governments are multiplying like rabbits, at a rate of one new entity added each day. They operate the schools our children attend, determine the uses of our property, and tax us at a higher rate than the national government.

It wasn't supposed to be this way. The founding fathers, fearing all government, created federalism not to aggrandize state governments but to protect individual liberty, presuming that government closer to the people could be trusted to guard those rights. As tyrannical state leaders violate liberty in the name of "states' rights," we discover that those who coined that term had it wrong. **States do not have rights. People have rights. And the purpose of federalism is to protect those rights.**

Grassroots tyranny usually afflicts the proverbial little guy. In Mesa, Arizona, Edward Salib owns a Winchell's Donut franchise and posts the company's signs in his store windows.

But Mesa ordered him to cease the advertising, citing an ordinance declaring that signs could only cover a certain percentage of a window (to protect the city's "aesthetics"). But the standard Winchell's advertising signs covered more than the allowed space. Salib asked if he could comply by leaving one window empty of signs. Not enough, the city responded.

Salib turned to the judicial system. Federal courts often strike down local laws when they violate freedom of speech—except when the speech is commercial. Although many people highly value commercial speech, the courts do not. Salib's challenge to Mesa's ordinance failed in the trial court and is now on appeal.

There are thousands of such stories. The typical person lacks the resources to take on local governments. The odds are further stacked by the politicians' ability to use their citizens' tax dollars against them. Even when people can stand up for themselves, they often encounter court systems that indulge every presumption in favor of local government power.

What can we do to fight the leviathan? First, we should pay attention. The school board member or zoning commissioner often has more impact on the lives of ordinary people than does the president of the United States. We should get to know local officials and expend as much effort on local politics as we do on national politics.

We also need to rediscover federalism. We must remember that the object of American constitutional government is the preservation of individual liberty and that government at every level is a constant threat to that liberty.

In terms of fighting grassroots tyranny, we should look to state constitutions. Many state constitutions provide greater protections of liberty than does their national counterpart.

Most important, we can fight back. Washington, D.C., remains an object of concern for those who value freedom. But the more dangerous bully may live closer than we think. Only by standing up against it can we hope to vindicate our own freedom and cause government officials to act like the public servants they are meant to be.

—Clint Bolick

Clint Bolick is a research fellow at the Hoover Institution. This essay is adapted from his new book Leviathan: The Growth of Local Government and the Erosion of Liberty *(Hoover Press, 2004).*

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